FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 8972
December 15, 1980]

TRUTH IN LENDING SIMPLIFICATION AND REFORM ACT

Additional Comment Invited on Revised Proposals to Simplify Regulation Z

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

In May, the Board of Governors of the Federal Reserve System issued a proposal to revise its Regulation Z, "Truth in Lending," to carry out the objectives of the Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980—Public Law 96-221), which became law on March 31, 1980. A summary of that proposal was sent to you with our Circular No. 8814, dated May 1, 1980.

Taking into account comments received on its May proposals, the Board of Governors has now issued revised proposals for simplifying Regulation Z, which implements the Truth in Lending, Fair Credit Billing, and Consumer Leasing Acts and which is contained in Title I of the Consumer Credit Protection Act, as amended. The Board further noted in its announcement of this action that the revised proposals are a complete overhaul, restructuring, and further simplification of its May proposals.

Comments on the revised proposals should be submitted by January 19, 1981, and may be sent to our Consumer Affairs and Bank Regulations Department.

Printed on the following pages are (1) portions of the text of the Board's press release announcing the new proposals. (2) the summary page from the *Federal Register* notice (Docket No. R-0288), (3) a list of questions on which the Board has particularly requested comment, and (4) a brief summary of the *new* proposals to simplify Regulation Z.

The complete text of the revised proposals (encompassing more than 90 pages) will be published in the *Federal Register*. However, single copies of that text will be made available upon request directed to the Circulars Division of this Bank.

ANTHONY M. SOLOMON,
President.

FEDERAL RESERVE press release

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The proposals are being made under the terms of the Truth in Lending Simplification and Reform Act, which became law in March. The Simplification Act, which the Board requested that Congress enact, requires that simplified implementing regulations be in effect by April 1, 1981. The proposals reflect also work undertaken, prior to passage of the Simplification Act, by the Board and the Federal Reserve Bank of Atlanta to rewrite Regulation Z as part of the Board's Regulatory Improvement Program. Under this program the Federal Reserve System is examining all Board regulations to modernize, simplify, shorten and put into plain language Federal Reserve rules in all fields in which the System has regulatory responsibilities.

The Board proposed -- and grouped its revisions of Regulation Z accordingly -- five principles for simplification. These are:

First, the regulation should contain precise, simple rules--based on enforceable obligations--as opposed to principles that create ambiguity and require additional regulatory clarification.

Second, tolerances in disclosures should be more flexible and the use of estimates should be increased.

Third, the emphasis should be on disclosures relevant to credit decision making.

Fourth, burdens not justified by substantial consumer benefit should be eliminated.

Fifth, the regulation should give creditors some flexibility to tailor disclosures to their own credit plans.

As part of its simplification effort, the Board is proposing a number of sample forms that can be relied upon when properly used.

There is attached a brief description grouped under the simplification principles proposed by the Board, of the principal proposed new changes in Regulation Z, compared with current requirements of the Regulation, together with statements of reasons for proposing these changes.

The Board noted, in making its proposals, that three basic problems hinder shortening and simplification of Regulation Z:

1) The scope of the original Truth in Lending Act of 1969, which called only for disclosures to consumers of the true costs of borrowing, has been expanded to cover also the issuance of credit cards and liability for their loss, resolution of billing errors and disclosures of the conditions of consumer leases. The underlying statute also provides protection for consumers from endangering their financial interest in their homes, conditions for purchasing credit life insurance and rights for consumers who receive shoddy merchandise when they use a bank credit card.

2) Over the years, the Board has issued some 50 interpretations of the Regulation, and the staff has written some 1,500 interpretive letters, many of which are relied upon legally by creditors. Much of this material will be dealt with in a commentary to be issued at a later time, but part of it must be included in the revised Regulation.

3) Over the years also, credit has become much more complicated. It takes various forms, such as revolving credit and closed-end credit; it may be payable on demand or in installments of various kinds; insurance may or may not be required; credit may be extended only upon application in person, or by mail or by telephone, and such variants must be covered by the Regulation.

Despite these difficulties, the current proposal is 40 percent shorter than the existing Regulation and the formal interpretations of it (and 20 percent shorter than the May proposals). This has been achieved mainly by focusing on common, everyday types of transactions, and not trying to cover every conceivable situation in the huge, almost endlessly complicated and diverse field of credit. It is the Board's belief that in the interests of havings a more understandable, serviceable and shorter regulation and disclosure statement both consumers and creditors will be willing to forego disclosures or provisions that, essentially are tailored to fit particular situations applying to few consumers or transactions.

In this respect, the Board said:

> The simplification effort should produce positive consumer benefits. By eliminating the less significant regulatory material disclosures will be easier to understand and therefore more useful in common, everyday transactions. Reduction of detail should also help direct enforcement of the law toward substance rather than technicalities. Major simplification should reduce the volume of nonproductive litigation, improve acceptance of consumer credit protection regulation and, to the extent this occurs, encourage voluntary compliance.

The Board welcomes comment on any part of its proposals, but asks, in particular, for comment on the principal proposed changes, and on the questions listed in Attachment 2.

The Board is mailing to all who commented on its May proposals the full proposed simplified Regulation Z, and related forms. These are available upon request from the Reserve Banks.

Attachments
1. Summary page from the Federal Register Notice of the Board's proposals.
2. A list of questions on which the Board wishes particularly to receive comment.
3. A summary of the Board's principal new proposals.

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Proposed Rulemaking

Federal Reserve System

[12 CFR Part 226]

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

TRUTH IN LENDING

Revision of Regulation Z

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing for public comment a second complete revision of Regulation Z (Truth in Lending), to implement amendments to the Truth in Lending Act adopted by Congress in March 1980 (Title VI of the Depository Institutions Deregulation and Monetary Control Act, Public Law 96-221). That act becomes effective on April 1, 1982, but requires the Board to have implementing regulations in place by April 1, 1981. The Board published a first draft for comment on May 5, 1980 (45 FR 29702) and has now revised the proposal on the basis of the comments received and its own analysis.

DATE: Comments must be received by January 19, 1981.

ADDRESS: Comments may be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue, N.W., Washington, D.C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments received should refer to docket number R-0288. To insure consideration, comments must be received by the Board by the close of the official comment period. To facilitate analysis, comments on separate sections of the regulation should be made on separate pages. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, Board of Governors, Federal Reserve System, Washington, D.C. 20551, at (202) 452-2412, (202) 452-3667, or (202) 452-3867:

§§ 226.1,3	Beth Morgan	§§ 226.17	Denise Rechter
226.2	Denise Rechter	226.18	Beth Morgan
226.4	Gerald Hurst		Claudia Yarus
226.5-11	Ruth Amberg	226.19, 20, 23	Susan Werthan
	Jesse Filkins	226.21, 22, 24	Rugenia Silver
	Stan Mabbitt	Subpart D	Barbara Ranagan
226.12	John Wood		Steve Zeisel
226.13	Barbara Ranagan	Subpart E	Lynn Goldfaden
226.14	Stan Mabbit		Susan Werthan
226.15	Ruth Amberg	Appendices	Gerald Hurst
			Denise Rechter

Attachment 2

Questions on Which the Board Particularly Requests Comment

Definitions

1. Should a creditor be defined as any person that made more than 25 credit extensions in the preceding year (5 in the case of transactions secured by a dwelling), assuming the other requirements of the definition are met? (§ 226.2)

2. If credit is extended without a finance charge, should a written agreement to repay in more than four installments be required in order for the credit-extender to be considered a creditor? (§ 226.2)

3. Should required deposit balances be eliminated from the regulation, meaning that any required deposits or investments would not be taken into account in making Truth in Lending disclosures? As an alternative, should required deposit balances be taken into account only if they are above a certain percentage of the amount financed? (§ 226.2)

4. Should consummation, the time by which closed-end credit disclosures normally must be given, be defined as the time when the consumer becomes contractually liable on the obligation under applicable law? (§ 226.2)

5. Should a security interest be defined more narrowly than under the current regulation, to exclude a number of incidental property interests such as accessions, accessories and interests in insurance and unearned insurance proceeds? (§ 226.2)

6. Should downpayments be defined to include a deferred portion of the down-payment (so-called "pick-up payments")? (§ 226.2)

Exemptions

7. Should loans that are extended by a trust be exempt from the regulation? (§ 226.3)

Finance Charge

8. Should a tolerance be provided for calculating and disclosing the finance charge, similar to the margin of error already provided for the annual percentage rate? (§ 226.4)

9. Should an application fee be considered a finance charge? (§ 226.4)

10. Should a fee for membership or participation in a credit plan be exempt from the finance charge, so long as the fee is not tied to a particular credit extension? (§ 226.4)

11. Should a fee for reconveyance in a realty transaction be excluded from the finance charge? (§ 226.4)

12. Should sellers points in a realty transaction be excluded from the finance charge in all cases? (§ 226.4)

13. Should the cost of credit life or property insurance to be excluded from the finance charge be permitted to be disclosed on a unit-cost basis? (§ 226.4)

Open-End Credit Provisions

14. Unlike the current regulation and the May proposal, but in accordance with the statute, this proposal does not require disclosure on the initial disclosure statement of the minimum payment. Is it necessary to require such a disclosure under Truth in Lending or is such information routinely provided?

15. What disclosures should be made in connection with variable rate open-end plans? (§ 226.6 and 226.7)

16. How should the annual percentage rate disclosure be handled when a finance charge is imposed during a billing cycle but there is no balance on the account? (§ 226.7)

17. Should the proposal limit the applicability of the change in terms notice requirement? (§ 226.9)

18. Does the proposal's streamlining of the prompt crediting of payments requirement afford adequate consumer protection?

19. Should the proposal address the applicability of the issuance and liability rules to authorized users of credit cards?

20. Where the regulation provides relief to creditors for inadvertent collection action or for reporting a consumer's account as delinquent after receiving a billing error notice, are there operational problems in the regulation's requiring a creditor to redress the inadvertent action? (§ 226.13(d) and (4))

21. Does the proposal's automatic debit provision adequately protect consumers when asserting billing errors? (§226.13(d)(5))

22. When should the consumer have the right to rescind under an open-end plan in which a security interest is taken in the consumer's principal dwelling? (§ 226.16)

Closed-End Credit Disclosures

23. Should a creditor base its disclosures only on the legally-enforceable agreement with the consumer, even if there is an informal or "side" understanding of the terms that is different from the legal obligation? (§ 226.17)

24. Should loans involving multiple advances be disclosable either by treating all of the advances as a single transaction or by disclosing each advance as a separate transaction? (§ 226.17)

25. Should creditors providing construction loans with permanent financing be permitted to give separate disclosures for each phase as an alternative to treating both phases as a single transaction? (§ 226.17)

26. When a creditor makes early disclosure of credit terms based on the best information available at that time, should the creditor be required to provide new disclosures when an event occurs before consummation that makes the previous disclosures inaccurate? (§ 226.17)

27. Should the number of items that must be disclosed as part of the amount financed explanation be reduced? (§ 226.18)

28. Should creditors in residential mortgage transactions with variable rate clauses be required to provide examples of the effects of an increase in the rate? (§ 226.18)

29. Should renegotiable rate mortgages be considered variable rate transactions? (§ 226.18)

30. Should the special rules for residential mortgage transactions subject to the Real Estate Settlement Procedures Act (RESPA) be revised in the following ways:

    (1) Define "written application" for Truth in Lending purposes in the same way as that term is defined under RESPA?

    (2) If new disclosures are required because the annual percentage rate is beyond the tolerance, require redisclosure of only the changed terms?

    (3) Combine the good faith estimate of settlement costs under RESPA and the amount financed explanation under Truth in Lending into one form, such as the model form in § G(4) of Appendix G? (§ 226.19)

31. Should a refinancing requiring new Truth in Lending disclosures be defined only as a transaction that extinguishes and replaces an existing obligation? (§ 226.20)

32. Should the assumption of an obligation require new Truth in Lending disclosures only when the obligation assumed is a residential mortage transaction? (§ 226.20)

Annual Percentage Rate

33. Should a wider tolerance be provided for annual percentage rate calculations and disclosures in closed-end credit transactions involving irregular payment schedules or multiple advances? (§ 226.22)

Right of Rescission

34. Should the right of rescission be waived whenever the customer determines that the extension of credit is needed to meet a bona fide personal financial emergency, in contrast to the requirement in the current regulation that the emergency endanger persons or property? (§ 226.23)

Consumer Leases

35. Should the renegotiation of a consumer lease require new leasing disclosures only when the existing lease is satisfied and replaced by a new consumer lease? (§ 226.26)

Model Forms

36. Should the model disclosure forms and clauses for credit and lease transactions, which if used property would assure compliance with the regulation, be required or expanded in any way? Should model forms be provided for other specific types of transactions? (Appendices)

Simplification Principles and Specific New Proposals

The regulation should contain precise, simple rules as opposed to principles that create ambiguity and require additional regulatory clarification.

Current Requirement	Proposed Change	Reasons
1. The regulation applies to "creditors" who "in the ordinary course of business regularly extend or arrange for the extension of consumer credit."	"Creditor" defined as person who extends credit more than 25 times a year (or more than 5 times in the case of transactions secured by a dwelling).	To avoid the imprecision of "ordinary course of business" and "regularly extends" and the need for further regulatory material.
2. Credit where there is no finance charge is covered if it is payable by agreement in more than four installments. This has been deemed to include informal arrangements.	Coverage limited to written agreements. Coverage is limited to written agreements, unless a finance charge is involved. All agreements involving a finance charge continue to be covered.	To exclude informal arrangements not involving a finance charge, such as those frequently made by doctors, dentists, small tradesmen and others as an accommodation to their customers.
3. Disclosures must be made prior to "consummation" of the credit transaction which may be when the customer has an "economic incentive" to go forward with the transaction.	"Consummation" would occur only when the consumer becomes contractually liable.	To reduce uncertainty over the timing of required disclosures.
4. Disclosures must be made on the basis of the "understanding" between the parties, even if at variance from the legal obligation.	Disclosures based on the legally enforceable obligation.	To avoid uncertainties produced by disclosure based upon informal terms of repayment.
5. "Points" paid by the seller in a real estate transaction must be included in the finance charge if paid, indirectly, by the purchaser through an increase in purchase price.	Exclude seller's points from the finance charge in all cases. Points paid by the buyer of the house would continue to be disclosed as part of the finance charge.	To avoid difficulty in knowing whether purchase prices have been specifically increased to cover seller's points. Also, to simplify disclosures.

Tolerances in disclosures should be more widely available.

Current Requirement	Proposed Change	Reasons
1. The disclosed finance charge must be accurate to the penny.	Incorporate the 1/8 of 1% tolerance already provided for the APR into the finance charge disclosure.	To ease the burden of finance charge calculations and remove liability for slight errors.

Current Requirement	Proposed Change	Reasons
2. In irregular transactions, although certain APR tolerances are permitted, these are limited to several slight irregularities and have no application to the majority of complex transactions.	Provide a tolerance of 1/4 of % for any transactions involving multiple advances or irregular payments.	To reduce regulatory complexity and calculation difficulties.
3. Even though creditors have provided good faith disclosures before consummation, if an item changes before consummation, no matter how slight, full redisclosure is required.	No new disclosures required once good faith estimates given except in certain real estate transactions.	To help effectuate the credit shopping goals by promoting earlier disclosures.

Emphasis should be on disclosures relevant to credit decisionmaking.

Current Requirement	Proposed Change	Reasons
1. A change in the original terms of an obligation is generally considered a "refinancing" requiring all new disclosures.	Limit the concept of refinancing to the complete replacement of an existing transaction with a new one.	To remove a source of many letters, interpretations, and special rules.
2. New disclosures required when any consumer credit transaction is assumed by another customer.	New disclosures required only in assumption of residential mortgage transaction.	To limit redisclosure responsibilities to those assumptions in which consumer is most likely to compare credit sources.
3. Extended disclosures of security interests and other terms relevant to post-consummation events like default and prepayment.	Elimination of disclosure details such as whether security interest applies to "after-acquired" property.	To remove unnecessary technical material that does not aid credit-shopping, complicates disclosures and causes unproductive litigation

Burdens not justified by substantial consumer benefit should be eliminated.

Current Requirement	Proposed Change	Reasons
1. Unusual transactions which may have aspects of credit, but which do not lend themselves to disclosures without complex rules, are covered--for example, pawn shop transactions, layaway plans, letters of credit, and utility "budget plans."	Exclude these transactions from coverage.	To remove a source of unnecessary regulatory detail and burden in situations where disclosures are not particularly meaningful.
2. The three-day right of rescission where a home is used as security (which requires that no funds be disbursed during the period) may be waived only if the delay "will jeopardize welfare, health, or safety or endanger property."	Waiver may be made simply if consumer determines there is a "bona fide personal financial emergency" (the statutory language).	To allow customers to obtain their money promptly (for example, from a second mortgage). Protection from overreaching is still provided since the use of preprinted forms to request a waiver is prohibited.
3. Certain minor disclosures are required with specified language--e.g. "pickup payment," "balloon payment," "trade-in."	Deletion of requirements.	To omit detail with no substantive loss to consumers.
4. Consumer deposits in the nature of compensating balances (called "required deposit balances") must be taken into consideration in APR calculations and separately itemized and disclosed.	Consider excluding any consideration of "required deposit balances," at least below a certain amount where there would be little impact on APR.	To remove a source of complicated regulatory language, disclosures, and mathematical calculations that add very little to accuracy of credit cost disclosures.

The regulation should give creditors some flexibility to tailor disclosures to their own credit plans.

Current Requirement	Proposed Change	Reasons
1. In certain transactions with variable rates, a hypothetical example of the effect of a 1/4 of 1% increase in the rate is required.	The terms in the example may be designed by the creditor.	To allow creditors to design an example which best reflects their own terms.

Current Requirement	Proposed Change	Reasons
2. Where there are advances under a closed-end credit line, the dates of the advances must be estimated and a single disclosure made.	The creditor may either treat the arrangement as a single transaction or, alternatively, make disclosures for each draw under the line.	To recognize that individual circumstances, best known to the creditor, may make one disclosure or the other more meaningful and easier to compute.
3. A single integrated disclosure is required for construction loans involving advances during construction and a set amortization schedule after construction is completed.	At the creditor's option, allow transaction to be divided into two segments for disclosure--one for the construction phase and one for the amortization.	To remove need for complicated calculations required to integrate construction advances with amortization schedule, where separate disclosures may also be useful to consumers.
4. Specific rules apply for treatment of "cash rebates" from the creditor or the manufacturer.	At the creditor's option, cash rebates need not be incorporated into disclosures.	To avoid necessity for complex rules covering great variety of cash rebate situations.
5. In credit advertising an example of a specific payment schedule must be shown.	Creditors are given more flexibility in showing terms of repayment in ads.	To allow creditor to determine most appropriate way to describe its own plan.

Cir. 8972

federal register

Friday
December 5, 1980

Part III

Federal Reserve System

Credit; Truth in Lending; Revision of Regulation Z

[Ref. Cir. No. 8972]

FEDERAL RESERVE SYSTEM

12 CFR Part 226

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

Credit; Truth in Lending; Revision of Regulation Z

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing for public comment a second complete revision of Regulation Z (Truth in Lending), to implement amendments to the Truth in Lending Act adopted by Congress in March 1980 (Title VI of the Depository Institutions Deregulation and Monetary Control Act, Pub. L. 96–221). That act becomes effective on April 1, 1982, but requires the Board to have implementing regulations in place by April 1, 1981. The Board published a first draft for comment on May 5, 1980 (45 FR 29702) and has now revised the proposal on the basis of the comments received and its own analysis.

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FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, Board of Governors, Federal Reserve System, Washington, D.C. 20551, at (202) 452–2412, (202) 452–3667, or (202) 452–3867:

Secs.
226.1, 3—Beth Morgan
226.2—Denise Rechter
226.4—Gerald Hurst
226.5–11—Ruth Amberg, Jesse Filkins, Stan Mabbitt
226.12—John Wood
226.13—Barbara Ranagan
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226.17—Denise Rechter
226.18—Beth Morgan, Claudia Yarus
226.19, 20, 23—Susan Werthan
226.21, 22, 24—Rugenia Silver
Subpart D—Barbara Ranagan, Steve Zeisel
Subpart E—Lynn Goldfaden, Susan Werthan
Appendices—Gerald Hurst, Denise Rechter

SUPPLEMENTARY INFORMATION: In March 1980, Congress adopted the Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act, Pub. L. 96–221), which contained sweeping revisions to Truth in Lending. While the act does not become effective until April 1, 1982, the Board is required to adopt final rules implementing the act by April 1, 1981, and creditors may begin complying with the new regulation at that time.

One month after adoption of the revised statute, the Board published for comment a proposed revision of Regulation Z (45 FR 29702, May 5, 1980). That revision incorporated both changes mandated by the revised statute and changes under the existing act. The proposal was published with the understanding that it did not necessarily reflect all of the revisions that the Board might consider in implementing the new statute. The Board published the proposal at that time in order to encourage public involvement in the process as early as possible and to assure that the entire rulemaking procedure could be completed by April 1, 1981.

Following a three-month comment period ending on July 31, 1980, the Board received more than 500 comments on the May proposal. (Copies of these comments are available through the Office of the Secretary, Board of Governors, Federal Reserve System, Washington, D.C.) As a whole, the comments reflected strong support for the concept of simplification, but, as expected, they raised a great variety of substantive issues regarding particular aspects of the draft. In many cases, these comments form the basis for alterations in specific provisions, as noted in the section-by-section analysis of the draft. In other cases, as also noted, the position urged by comments is not reflected in the draft, because in the Board's view that position would not properly carry out the statutory goals.

The May proposal contained substantial changes in both the organization and the substance of the existing regulation. The structure of the May proposal has been retained in this draft, but this proposal reflects some major substantive changes from both the current regulation and that earlier proposal. The Board believes that the Truth in Lending Simplification and Reform Act constitutes a mandate to the Board for extensive revision in the regulation. Moreover, the Board believes that substantial consumer benefits are to be gained from meaningful simplification of the regulation.

First of all, simplification will produce disclosures that are simpler, easier to understand, and in a form more readily usable by consumers. A primary goal of the simplifying effort is disclosures that provide essential information in a straightforward, uncluttered form. To the extent that essential information has previously been accompanied by complex disclosure of less significant terms, the impact and utility of the resulting disclosure statement have been diluted.

Second, as a general matter regulatory burdens on the credit-granting process may adversely affect consumer access to credit, and certainly have a bearing on its relative costs. To the extent that these burdens can be reduced, there should be a beneficial effect on the availability and cost of credit. The Board believes that the reductions being proposed, while having the prospect of significantly reducing regulatory burden, nevertheless leave in place the provisions necessary to carry out the original purpose of the Act.

Third, by reducing the emphasis of the regulation on technical details, the Board believes that the efforts of supervisory agencies can be directed more toward matters of substance, better serving the cause of consumer protection.

Finally, no matter how vigorous the supervisory enforcement, without a spirit of committed voluntary compliance by creditors, Truth in Lending will probably never provide the full consumer benefits for which it was designed. To the extent that creditors have perceived the regulation as dealing with hypertechnical complications unrelated to any real consumer benefit, acceptance of the goals of Truth in Lending may well have been hampered. By paring back the regulatory requirements to those that have obvious consumer benefit, support for consumer regulations as a legitimate area of government activity should be increased. This, too, should increase long-range consumer benefits.

This proposal, which is based on both the comments received on the May draft and on extensive further analysis in the six months since adoption of the new act, reflects five major principles. First, the regulation substitutes, where possible, precise, easily-applied rules for principles that create ambiguity and require additional regulatory clarification. Many of the staff interpretations of the current regulation, as well as a portion of the existing regulation itself, represent attempts to clarify and give substantive meaning to rather subjective principles that are not amenable to precise measurement. A certain amount of subjectivity in the regulation is unavoidable; not every regulatory concept can be reduced to a quantifiable standard. However, the Board believes that the concept of simplification requires further progress in that direction.

Second, tolerances in disclosures should be more widely available and creditors should be encouraged to make use of good faith estimates. The Truth in Lending Act explicitly authorizes the Board to permit tolerances in numerical disclosures and recognizes the utility of using estimates in making disclosures. While accuracy of disclosures is obviously important for informed credit shopping, absolute inflexibility is not a prerequisite to meaningful credit information. Congress has already specifically authorized a tolerance for the annual percentage rate, which is the most important credit term in the regulation, and the proposal provides similar slight tolerances for other numerical disclosures. The proposal also encourages the greater use of good faith estimates in making disclosures, on the grounds that earlier disclosure may facilitate credit shopping. The Board recognizes that early disclosure is not always consistent with absolute precision in disclosures. Indeed, disclosures are most precise when made at the time of consummation, since the creditor at that point is most likely to have all of the necessary information for total accuracy. However, at the point of consummation, the consumer has normally made the credit decision, and Truth in Lending disclosures then merely confirm the customer's understanding of the transaction. Such disclosures do not necessarily form a valid basis for comparison shopping. For this reason, the Board seeks to encourage the greater use of good faith estimates in making disclosures, in the belief that this will in turn encourage creditors to provide disclosures at an earlier time.

Third, the regulation reflects an emphasis on disclosures that are relevant to credit decisions, as opposed to disclosures related to events occurring after the initial credit choice. In the Board's view, the primary goals of the Truth in Lending Act are not particularly enhanced by regulatory provisions relating to changes in terms on outstanding obligations and on the effects of the failure to comply with the terms of the obligation.

Fourth, burdens not justified by substantial consumer benefits should be eliminated from the regulation. As in any rulemaking activity, the Board will weigh the cost of a particular provision to creditors against its potential benefit to consumers. While this cost-benefit analysis has always been a factor in implementation of the Truth in Lending Act, the Board believes that the legislative history of the Truth in Lending amendments, as well as congressional concern regarding the burden of regulations as a whole, dictates a heightened awareness of this element that must be reflected in the new Regulation Z. In carrying out the requirements of the statute, the Board will not impose any burdens on the credit-granting process that cannot be fully justified by consumer benefits. This analysis is not always amenable to precise measurement, but involves such factors as the number of transactions subject to a particular provision, the complexity of the disclosures or underlying mathematical calculations needed to comply with it, and the extent to which it is likely to further the general statutory goals of providing certain basic information to facilitate credit shopping.

Fifth, more flexibility should be incorporated into the regulation. While the basic requirements of the regulation should be set forth as clearly and simply as possible, rigid rules may be unnecessary in other cases and may in fact hamper creditors' efforts to make disclosures that accurately reflect their own credit plans. The proposal attempts, as far as possible, to permit creditors more flexibility in calculating and disclosing the terms of individual transactions.

The proposal set forth below illustrates the application of those principles. The Board recognizes, however, that the proposal remains a rather complex and lengthy regulatory document. For three reasons, the Board believes that even the most successful simplification effort cannot distill the Truth in Lending Act into a handful of simple rules.

First, the scope of the original Truth in Lending Act has been greatly expanded by statutory additions beyond mere credit disclosures. The regulation now also implements statutes governing the issuance of credit cards, liability for their loss, resolution of billing errors, and disclosures for consumer leases. There are provisions to prevent creditors from excluding required credit life insurance from the cost of credit, to protect consumers from unwisely encumbering their homes, and to ensure that consumers can withhold payment for shoddy merchandise when using a bank credit card. As a consequence, the statute now runs to over 15,000 words. Although Congress has made extensive revisions to certain disclosure requirements, much of the underlying law was unaffected by the recently enacted Truth in Lending amendments. Thus, the breadth of the legislation that Regulation Z implements remains a major impediment to brevity and simplicity.

Second, one goal of the simplification effort is to incorporate virtually the entire body of published Truth in Lending material into the regulation and an accompanying commentary. This commentary will contain much of the detail and specificity now in the existing regulation and in the more than 50 Board interpretations and 1,500 staff interpretations issued on Regulation Z since 1969. While much of this material will be reflected in the new regulation or commentary, the Board envisions that the interpretations themselves will be rescinded. The commentary will probably not be adopted at the same time as the final regulation, but should be available by the time the regulation becomes mandatory in April 1982. The Board anticipates that the commentary will have the status of an official interpretation of the regulation, and that no staff interpretations will be issued under the revised regulation. The process of incorporating the existing interpretations is at odds with the goal of simply shortening the regulation. To some extent, this conflict will be resolved by including the necessary detail in the commentary, rather than in the regulation itself. However, the regulation must incorporate some of the material previously contained in interpretations.

Third, credit itself has become very complex. It may be available on a revolving or closed-end basis; payable on demand or in equal or graduated installments; with a precomputed finance charge, on a simple interest basis, or both; secured or unsecured; and with or without credit life and property insurance, which may be voluntary or required. It may be requested in person, by mail, or by telephone, and may be refinanced, assumed, or deferred. In most cases, implementing the statute requires that these variations, and many more, be reflected in the regulation.

All of the significant changes to the proposal are discussed fully in the section-by-section analysis of the regulation. However, some of the more important changes are highlighted here, to illustrate the thrust of the proposal:

A tolerance would be provided for finance charge disclosures, similar to that now provided in annual percentage rate calculations.

A greater annual percentage rate tolerance would be authorized for all irregular transactions.

Seller's points would be excluded from the finance charge in all cases.

The creditor definition would contain a precise numerical rule for determining whether the definition applies.

The regulation would require no redisclosure when a term is changed prior to consummation, rendering earlier disclosures inaccurate.

Refinancing would be redefined to cover only those changes in terms which extinguish an existing obligation and create an entirely new one in its place.

Consummation, the time by which disclosures must be given, would be defined as the time at which a consumer is contractually bound to a transaction, not merely when a nonrefundable fee is paid.

Disclosures would be based only on the legally enforceable obligation between the parties, not on any unenforceable understanding which is at variance with the contract.

The concept of required deposit balances would be eliminated from the regulation.

Security interest would be defined much more narrowly, to exclude a variety of incidental rights.

No disclosure of an after-acquired property clause would be required in connection with disclosure of a security interest.

The waiver of the right of rescission would be more readily available to consumers.

The Board recognizes that these changes, as well as similar revisions discussed below, may result in less information being provided to consumers. At the same time, the changes may eliminate specific guidance now provided to creditors with unusual types of transactions or credit plans. Much of the complexity in the existing regulation results from the Board's attempts over the last 12 years to provide consumers with disclosures in every possible credit transaction and to provide creditors with precise rules for every such circumstance. Any attempt to significantly reduce the regulatory burden and to decrease the complexity in the regulation will necesarily result in reduced information and reduced guidance in certain situations. The Board believes that this reduction is unavoidable if there is to be any meaningful simplification of Regulation Z, and the proposal reflects that belief.

The section-by-section analysis compares the new proposal with the first draft published in May. Many of the provisions are unchanged, or have been the subject of nonsubstantive editorial revisions, and that fact is briefly noted in the discussion. The analysis does not reiterate the same material contained in the May draft; its purpose is to highlight significant changes and discuss comments on the first proposal that the Board believes should be addressed.

Comment is solicited until January 19, 1981. In view of the rapidly-approaching April 1 deadline for completion of the rulemaking process, commenters must submit their comments within the specified time to insure adequate consideration. Since many of the issues arising from the proposal and its predecessor have already been addressed, commenters are encouraged to focus particularly on new issues not previously discussed, as well as on the impact of changes reflected in this proposal.

Subpart A—General

Section 226.1—Authority, purpose, coverage, organization, penalties and liabilities

This section restates the authority and purpose provisions now contained in § 226.1(a) of the current regulation, and describes the conditions under which persons will be subject to the credit and leasing requirements. It also explains the reorganization of the regulation into five major subparts, and directs attention to the shifting of certain material from the regulatory text into appendices. Except for the deletion of paragraph (e), relating to circumvention or evasion, and minor editorial revisions, this section is substantially unchanged from the May proposal.

Paragraphs (b)(1) and (2) of the May proposal have been merged into a single paragraph (b). The word "dwelling" has been substituted for "residence" to conform to the terminology used in the statute and the regulation as a whole, and the clause concerning the regulation of trade practices has been deleted since it added little to the substance of the section. In response to comments, the Board emphasizes that the reference to charges in paragraph (b) includes interest rates.

In paragraph (c)(1), the parenthetical explanations have been deleted as unnecessary.

Several commenters expressed concern about whether foreign branches of domestic banks are subject to Regulation Z. There is nothing in the Truth in Leading Act to indicate that the Congress intended the act to apply beyond the territorial limits of the United States. In fact, the act's declaration of purpose reflects a strong domestic orientation; Section 102 states that the Congress sought by means of the informed use of credit to strengthen competition among creditors and to enhance economic stabilization. The domestic ecomony would be the logical target for such goals. Hence, it is the Board's view that creditors (including United States branches of foreign banks) must comply with Regulation Z when consumer credit is extended to residents of the United States. A foreign branch of a United States bank need not comply with the act or regulation, on the other hand, in extending credit to a United States citizen residing or visiting abroad.

The majority of the commenters who expressed an opinion regarding the format of the May proposal favored the use of subparts, even though it results in a longer regulation. The comments also clearly favored the publication of an official commentary to facilitiate compliance by creditors. Many of them endorsed the idea of following the Uniform Commercial Code format.

Paragraph (e) of the May proposal expressly prohibited creditors from taking any action for the purpose of circumventing or evading the disclosure requirements of Regulation Z. Many of the commenters urged the Board to delete this provision because of the likelihood that it could foster litigation, particularly since it contained no reference to knowing or intentional actions. After further consideration of this matter, the Board has decided to delete the provision in order to avoid adding ambiguity regarding the application of the regulatory requirements.

A new paragraph (e) has been added to provide a reference in the regulation to the various liability provisions in the Truth in Lending Simplification and Reform Act of 1980. A number of commenters suggested such a reference.

Section 226.2—Definitions and rules of construction.

Section 226.2 has been reorganized into two paragraphs: § 226.2(a), which contains, in alphabetical order, the definitions that apply to the entire regulation, and § 226.2(b), which contains the rules of construction. Definitions that apply solely to consumer leasing are now located in § 226.25 of this regulation. Section 226.2 incorporates all of the defined terms used in the May proposal, with the exception of "required deposit balance" and the leasing definitions, and adds three new defined terms: "downpayment," "prepaid finance charge," and "regular price."

(a) *Definitions.*

Advertisement. This definition has been revised from that in the May proposal to clarify that only commercial messages are within its purview. This revision is consistent with the staff letters and the explanatory material that accompanied the May draft. The definition continues to exclude direct personal contact such as follow-up letters or cost estimates for individual consumers, but it does not exclude messages such as point of sale displays.

Certain types of messages, such as informational material exchanged between business entities or notices required by state law, may come within the definition, depending on the facts and circumstances of each case. For example, if the distribution of the informational materials is limited to business entities, and is not made available to consumers, or if a state law mandates that a specific notice be displayed and only the information so mandated is included in that notice, these would not constitute advertisements.

Finally, it should be noted that all persons, not only creditors, must comply with the advertising provisions. For example, a real estate developer that does not finance the sale of its houses may be subject to the advertising requirements of §§ 226.16 and 226.24, even though it may not be a creditor.

Arranger of credit. This definition has been revised to parallel the new numerical standard of more than 25 times in a calendar year (or more than five times a year when the obligation is secured by a dwelling) which is proposed in the definition of "creditor," discussed below. The definition is otherwise similar to its counterpart in the May draft.

Under this definition, a person may be considered an arranger only if the primary credit extender does not meet the definition of a "creditor." Thus, the definition should substantially limit the number of persons that would be considered arrangers of credit. The most likely example is a loan broker in a real estate transaction who arranges for owner financing for the buyer.

Billing cycle or *cycle.* In response to comment, this definition has been revised regarding the permissible variance among the number of days in each cycle. The purpose of a variance is to account for weekends, holidays, and differences in the number of days in the months. The previous proposal provided that cycles could be considered equal unless the number of days in a cycle varied by more than four days. The present proposal clarifies the computation of the four-day variance by tying that variance to the regular day or date around which the creditor plans its cycles. Comment is solicited on the feasibility of this proposed approach.

The requirement of equal cycles would apply even if a creditor applies a daily periodic rate to the daily balance, as the requirement is intended both to facilitate accurate disclosure of the annual percentage rate and to assure the furnishing of statements on a regular basis.

As noted in the previous **Federal Register** material, the use of the word "cycle" in addition to "billing cycle" is intended to make clear that the provision concerning regular periodic statements applies regardless of whether the creditor "bills" in the traditional sense or merely sends a statement of account activity, as may be the case with many depository institutions that do not bill because they receive payment directly from a payroll deduction or the consumer's asset account.

Board. This definition is unchanged from the May proposal.

Business day. This definition has been significantly revised from that in the May draft. The Board now proposes to adopt a business day definition that is substantially similar to its counterpart in Regulation E, which implements the Electronic Fund Transfer Act. This revision is in response to numerous comments that favored the adoption of similar definitions for Regulation E and Regulation Z. The Board anticipates that creditors will have the same business days for all provisions of this regulation, but it recognizes that a creditor's business days may differ for purposes of the two regulations. The Board solicits comment on whether this new approach is appropriate.

The Board recognizes that transactions that are subject to rescission may be different from other transactions and may require a different business day definition. Comment is solicited on alternative definitions which might be more appropriate for rescindable transactions.

Cardholder. This definition differs from the May proposal which, like the present regulation, provided that "cardholder" includes any person to whom a credit card is issued for any purpose. The present proposal provides that "cardholder" means a natural person to whom a credit card is issued for consumer credit purposes or a natural person who is a co-obligor or guarantor for such a card. In addition, for the limited purposes of the requirements of the sections on issuance and liability of credit cards, a "cardholder" includes *any* person, including organizations, to whom a credit card is issued for any purpose, including business, agricultural, or commercial.

The definition also stipulates that issuance of the card must have been at the request or application of the person to be covered as a "cardholder." This change reflects the issuance restrictions proposed in § 226.12(a).

Certain commenters asked that the Board specify which sections of the regulation apply to "hybrid" cards used for more than one purpose and to dual card systems. When a card is issued to an individual for consumer purposes, the mere fact that an organization has guaranteed to pay the debt does not remove it from the coverage of the consumer credit sections of the regulation. On the other hand, when a card is issued for business purposes, the fact that an individual uses it for consumer purchases does not subject the card issuer to the provisions on periodic statements, billing error resolution, and other consumer protections. Some card issuers issue two cards to the same individual, one intended for business use, the other for consumer or personal use. With such a system, the same person may be a cardholder for general purposes when using the card issued for consumer use, and a cardholder only for the limited purposes of the restrictions on issuance and liability when using the card issued for business purposes.

Card issuer. This definition remains unchanged from the previous proposal. A number of commenters asked for clarification of the agency concept, which is included in the definition and reflects the language of the statute. As agency relationships are traditionally defined by state law, the Board believes that it is inappropriate to define "agent" within the regulation, although the following examples may serve as guidance. The Board believes that merely providing services relating to the production of credit cards or data processing for others does not make one an agent of a card issuer. In contrast, a financial institution may become an agent of a card issuer when the cardholder uses a line of credit with the lender to pay obligations incurred by use of a card, pursuant to an agreement between the lender and the card issuer.

Cash price. This definition is substantially similar to its counterpart in the May draft. The phrase "taxes and fees for license, title, and registration" has been added to the end of the third sentence to clarify that these amounts may be included in the cash price.

The Board has received numerous questions regarding the proper treatment under the regulation of seller's or manufacturer's rebates in credit sale transactions. The manner in which these rebates are handled varies widely throughout the industry and the Board does not believe that a uniform rule regarding their treatment for Truth in Lending purposes would be either desirable or possible. Therefore, the Board proposes to allow creditors complete flexibility in the way in which they treat such amounts for purposes of Regulation Z disclosures and calculations. Creditors may make disclosures without taking these amounts into account, or may reflect the rebates in the disclosures. For example, where the seller and customer agree to apply the amount of a rebate to the price of the goods, the amount may be included, at the creditor's option, in the downpayment disclosed to the customer. Under the proposal, however, the creditor is not required to reflect the rebate in the disclosures in any way.

Closed-end credit. This definition is unchanged from the May proposal.

Consumer. This definition has been revised from that in the May draft to clarify that comakers, endorsers, guarantors, sureties and similar persons must be natural persons. A number of commenters requested this change to insure that the disclosures need not be given to business entities. The Board is particularly interested in receiving comment on the impact, if any, of this change on open-end credit plans.

Consumer credit. This definition has been slightly revised from that in the May proposal. The word "extended" has been added with no change in meaning intended.

Consummation. This definition represents a significant departure from both the May proposal and longstanding staff interpretations of the current regulation. Under this proposal, consummation occurs only when the consumer becomes contractually liable on the obligation as determined by state law. The payment of a nonrefundable fee has been eliminated from the definition as a standard for determining when consummation occurs.

Credit. This definition is essentially unchanged from the definition in the May proposal, except that the phrase "granted by a creditor to a consumer" has been deleted as unnecessary.

The Board recognizes that, while the concept of credit is central to Truth in Lending, the regulatory definition may be difficult to apply in particular fact situations. Even though a precise, easy-to-apply standard cannot be devised to resolve all questions, the Board believes that some guidance can be offered on the definition's applicability to certain recurring fact situations.

A review of the numerous staff and Board interpretations in this area highlights several factors that can be used in analyzing whether a particular transaction is considered credit for Truth in Lending purposes.

For example, in the Board's view, certain transactions do not involve the voluntary incurring of debt; others do not involve the *right* to defer a debt. Tax liens, tax assessments and court judgments would come with this category. However, where the consumer obtains third-party financing for such obligations (for example, obtaining a loan from a credit union to pay off a judgment to a bank), the third-party financing would constitute credit for Truth in Lending purposes.

Where the consumer's payments generally parallel the value received from the other party, with no continuing obligation to make payments, the Board would not view this as an extension of credit. For example, certain insurance premium plans involve payment in installments; each installment represents payment for insurance for a certain future period of time. If the consumer fails to make a payment, no coverage would be provided for that period. There is in this case no obligation for the consumer to continue making payments. Similarly, in a home improvement transaction involving progress payments, the consumer simply pays the value of work completed as the work progresses, with no contractual obligation to continue payments.

Certain types of pledge transactions may be viewed as cash sales rather than credit transactions. One example is a transaction involving a pawn shop. In this situation, the consumer sells goods to another party for cash, with the understanding that the goods may be repurchased within a certain period. While staff letters have held such transactions to be credit, the Board believes they are more analogous to cash sale transactions, since the customer normally has no obligation to repay the funds acquired in the transaction.

Board Interpretation § 226.201 exempts layaway plans from the coverage of the regulation, if the consumer may cancel the purchase and receive a full refund of any amounts paid toward the cash price. This interpretation has not been incorporated into the new regulation and the Board believes that any specific reference to such transactions is unnecessary in the regulation. In the Board's view, layaway plans do not involve an extension of credit and are thus beyond the scope of the regulation.

Similarly, the creation of an option contract and the issuance of a letter of credit do not, in the Board's view, constitute extensions of credit.

Credit card. This definition is unchanged from the May proposal.

Creditor. The first paragraph of this definition has been significantly revised to create a new standard for determining what activities make a person a creditor, based on the frequency of those activities. The current regulation requires that credit extensions occur "regularly" and "in the ordinary course of business" in order to bring the credit extender within the definition. These standards have proven difficult to apply, particularly in cases in which the main activity of a credit extender is unrelated to credit.

In order to create a clearer standard for determining who has disclosure responsibilities under the regulation, the Board now proposes a test based on the frequency of the credit extensions. If a person has made more than the specified number of consumer credit extensions in the calendar year preceding the transaction in question, that person is a creditor and must make disclosures. The purpose of this test is to apply the regulation to those persons that extend credit often enough that they can be expected to be able to provide disclosures and for whom the cost of doing so is more commensurate with the benefit to consumers of receiving disclosures. The number is set at 25 for most transactions. A lower number, five, is proposed for transactions secured by a dwelling, since these generally involve larger amounts of credit and represent the most important consumer credit decision. The Board solicits comment on this approach.

This definition is also revised to require a *written* agreement to pay in more than four installments, in order for a person offering a credit extension without a finance charge to be considered a creditor. This revision is proposed in order to exclude from the regulation's coverage very informal arrangements not invoving a finance charge, such as those frequently made by doctors, dentists, and other providers of professional services. However, when a finance charge is imposed or when the agreement to repay in more than four payments is written, those arrangements would come within the definition.

Finally, a parenthetical has been added to clarify that a downpayment is not considered an installment for purposes of the four-installment rule.

A number of commenters requested an explicit statement regarding who is the creditor in a transaction in which a seller of goods assigns its customer's installment sales contract to a financial institution. It is clear that Congress, in amending the statutory definition, intended the seller in these situations to be the creditor. This would be true even when the seller routinely assigns contracts in this fashion and the financial institution had provided a prior credit approval.

Paragraphs (4) and (5) of this definition correspond to § 226.2(q)(4) of the May draft, and impose creditor responsibilities on card issuers. Paragraph (4) provides that card issuers that extend open-end credit or consumer credit that does not involve either a finance charge or an agreement to repay in more than four installments are creditors for purposes of Subpart B of the regulation. As all disclosures are to be made only as applicable, a card issuer that extends consumer credit without a finance charge, for example, would omit finance charge disclosures. The Board contemplates that other general subparts of the regulation regarding such areas as scope, definitions, finance charges, Spanish language disclosures, record retention, and use of model forms also apply. Paragraph (5) sets forth the responsibilities of a card issuer extending closed-end credit, and is analogous to § 226.8(q) of the present regulation. Again, the Board believes that the general provisions also apply to these creditors. The Board solicits comment on extending coverage to card issuers in this manner.

Credit sale. This definition is unchanged from the May proposal. Although some commenters asked that the definition be expanded to cover leases that may be terminated at any time without penalty, the Board does not believe that such transactions constitute credit sales.

Downpayment. This is a new definition, which has been added to § 226.2 for ease of reference. The term is used in §§ 226.18(b) and 226.18(j), as well as in the credit sale model form in Appendix G(1). As in the current regulation, a downpayment may include both a cash downpayment and the value of any trade-in or other property used to reduce the deferred price of the goods.

The second portion of the definition incorporates the substance of current Board Interpretation § 226.504, outlining the proper treatment of deferred portions of the downpayment, often referred to as "pick-up payments." Unlike the current rule, however, the definition would not require creditors to label the deferred portion as a pick-up payment or to reflect the payment in any manner in the payment schedule disclosure under § 226.18(g). If the deferred amount meets the test outlined in the definition, it would be treated as a downpayment for purposes of calculating the amount financed under § 226.18(b) and for purposes of disclosing the total sale price under § 226.18(j). Any amounts which do not quality for this treatment would be reflected as part of the amount financed and payment schedule and taken into account in calculating the annual percentage rate.

Dwelling. This definition has been revised from that in the May proposal to clarify the scope of its coverage. It includes all residences, which excludes structures such as recreational vehicles not used as a residence. The reference to "mobile home or trailer" has been taken out of the first sentence, because its placement there created some ambiguity. These items have been added to the second sentence as examples of dwellings. However, mobile homes and trailers are included in the definition only if they are used as residences, just as is the case with condominiums and cooperatives.

The revision of the first sentence also makes clear that the phrase "whether or not attached to real property" applies to all residential structures, not just mobile homes.

Open-end credit. This definition is substantively unchanged from the previous proposal. The proposed definition attempts to identify the difference between open-end and closed-end credit and to accommodate problems associated with particular credit plans.

Footnote 1 of the May proposal has been deleted from the present proposal because it simply offers additional guidance, rather than imposing a substantive requirement or relieving liability. That footnote provided that the creditor of an open-end credit account may verify credit information regarding the consumer from time to time without affecting the classification of the account as open-end credit. The Board intends to preserve this position in the commentary.

Paragraph (1) provides that the creditor must reasonably contemplate repeated transactions. A number of commenters asked for guidelines for determining when a creditor may reasonably contemplate multiple transactions. The proposal implements the statutory amendment intended by Congress, according to the Senate Report on S. 108, to curb the use of spurious open-end credit. In particular, the committee believed that consumers should receive essential cost disclosures, such as the finance charge and the total of payments, where a creditor makes what is likely to be a one-time credit extension; for example, when the initial transaction is the purchase of a home improvement, an automobile, or an item sold on a door-to-door basis.

The second part of the test for open-end credit is substantively unchanged from the May proposal. The present proposal has been clarified to indicate that fees imposed irrespective of a consumer's payment schedule are not penalties or additional charges for payment in full. For example, a minimum finance charge of $.50 every month is not an additional charge for full payment, because the charge is a function of the account activity rather than of payment in full. This requirement reflects, in part, the distinction that in open-end credit plans, unlike many traditional closed-end credit extensions, there is no specific payment schedule under which finance charges and the total of payments can be calculated in advance. In light of the fact that paragraph (3) requires calculation of any finance charge on the basis of the outstanding unpaid balance, in contrast to a precomputed finance charge on the basis of a payment schedule, the Board solicits comment on the necessity of also retaining the test in paragraph (2).

The May draft deleted the current regulatory rule that open-end credit be payable in installments. Some commenters were concerned that the removal of this requirement might subject traditional 30-day accounts to the regulation. Of course, if credit is not payable in four installments, the extension does not fall under the regulation, unless a finance charge may be imposed or a credit card is involved.

Paragraph (3) remains unchanged from the previous proposal. The Board solicited comment on whether it should define as open-end credit certain plans not subject to a finance charge from time to time on the outstanding unpaid balance. After considering the comments and what appears to be the congressional intent, the Board believes that when no finance charge may ever be imposed, the plan is not open-end credit. When the plan contemplates purchases from time to time, series of sales disclosures under § 226.17(g) may be appropriate.

Paragraph (4) of the definition remains unchanged from the May proposal. The Board contemplates that a line of credit may be considered self-replenishing even if the plan itself has a fixed termination date, if within the time the plan is in existence the consumer may use the line, repay, and reuse the credit without specific approval for each extension beyond verification of credit information such as the consumer's continued income and employment status. This factor is intended to assist creditors in distinguishing open-end credit from a series of advances made pursuant to a loan commitment. Under such a commitment, for example, a creditor might agree to lend a total of $10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $10,000. no more money is advanced under that particular agreement even if there has been repayment of a portion of the debt.

The May proposal also provided that consumer credit extended by use of a credit card would be considered open-end credit for limited sections of the regulation. This proposal deletes that provision. All of the special rules relating to credit card issuers are now contained in the definition of "creditor." The Board solicits comment on the necessity of making credit extended by use of a credit card open-end credit for limited purposes, in order to assure that card issuers comply with all applicable open-end credit requirements.

Unlike the May proposal, the present regulation specifically excludes from the definition of open-end credit negotiated advances under open-end real estate mortgages and letters of credit. The Board solicited comment on whether these exclusions are necessary and on the impact of omitting them from the regulation. Commenters presented different programs to the Board using the terms "open-end real estate mortgages" and "letters of credit." The Board believes that each plan must be independently measured against the definitions of consumer credit, open-end credit and closed-end credit, regardless of the terminology used in the industry to describe the plan. The fact that a particular plan is called an "open-end real estate mortgage," for example, is not determinative of its coverage as open-end credit. Therefore, no special exclusion is contained in the present proposal.

A number of commenters also asked whether certain special loan programs that make available many different features may be characterized as open-end credit. Under some existing programs, for example, a creditor might offer to extend credit under ten different rate structures, depending on whether a particular extension is unsecured or secured, and the nature of any such security. Furthermore, such a plan may have transaction charges for certain types of extensions (such as cash advances) but not for others. Some of these plans may have different bases on which to calculate minimum payments for different types of credit extensions. These factors in and of themselves do not preclude a plan from being open-end credit. The Board cannot rule on each individual program, and believes that no matter how complex a plan, the test of whether it is open-end remains the four-prong test enunciated in the regulation. For example, it would be more reasonable for a thrift institution chartered for the benefit of its members to contemplate repeated transactions from a member on a single account than it would be for an automobile dealer to make the same assumption about its customers. Furthermore, balances outstanding under the plan would be payable in full at any time without penalties that would tend to inhibit such prepayment; finance charges would be computed from time to time on the outstanding unpaid balance rather than precomputed; and the line available to the consumer would be reusable to the extent that the consumer repays the outstanding balance.

Periodic rate. The May proposal provided that the periodic rate may be stated as the decimal equivalent of a percentage rate as well as a percentage rate. As the comments indicated no necessity for permitting disclosure of the decimal equivalent, or any difficulty in converting to a percentage rate, the present proposal deletes the alternative.

The Board specifically solicited comment on prohibiting the use of 1/360th of a year as a period for which a rate may be applied. The present proposal does not by its terms prohibit the use of such a period. However, the Board contemplates that the application of this rate to a balance would be made in such a manner as to disclose the annual percentage rate with the degree of accuracy required in the regulation. Moreover, the Board proposes to take the position that the creditor would not be permitted to identify such a subdivision as a "daily" periodic rate. The Board contemplates that the definition by its terms excludes an initial one-time transaction charge, even if the charge is computed using a percentage of the transaction amount.

Person. This definition is unchanged from the May proposal.

Personal property. This definition is unchanged from the May proposal.

Prepaid finance charge. This definition was previously defined in § 226.11(f)(2)(i)(C) of the May proposal. For ease of reference, that definition has been added to § 226.2. The concept of "prepaid finance charge" is contained in § 226.8(e)(1) of the current regulation, and the new definition is based closely on that provision. This definition has been slightly expanded to clarify that a finance charge withheld from proceeds after consummation of a transaction is still considered a prepaid finance charge. For example, in a multiple-advance construction loan, a loan fee or other finance charge withheld from each advance as it is drawn down constitutes a prepaid finance charge, despite the fact that consummation has already occurred.

Regular price. This is a new definition and has been added to § 226.2 for ease of reference. The term is used in §§ 226.4(f) and 226.12(g). It was previously defined in footnote 15 to § 226.4(f) of the May proposal. The words "advertised price" have been added, making an advertised price synonymous with "regular price." The Board does not intend for an advertised price to be regarded as the "regular price," however, if it is clearly disclosed that the advertised price is not available to credit card purchasers.

The last sentence in footnote 15, providing that payment by check, draft, or similar means that may result in the debiting of a cardholder's open-end account shall not be considered payment made by use of that account, has been deleted as explanatory material; it will be incorporated into the Board's commentary to the regulation.

Required deposit balance. This definition, as well as the concept of a required deposit balance, has been deleted from the proposed regulation. While the Board recognizes that taking deposits into account in calculating the cost of credit may make the resulting numbers marginally more precise, it questions whether the complexity that the concept has produced in the regulation, interpretations, and calculations outweighs its utility.

In the May draft, the Board proposed to limit the definition of required deposit balance, primarily by excluding deposits on which more than nominal interest or dividends are earned. Although the comments generally favored limiting the definition, many of the commenters argued that the new standard presented many of the same difficulties as the current regulatory definition.

In light of its own experience with the concept of a required deposit balance and the comments on this matter, the Board now proposes to delete this item both as a disclosure and as an amount to be taken into account in computing an annual percentage rate. If this is done, conforming changes would also be made to Supplement I to the regulation (§ 226.40).

The Board specifically solicits comment, however, on whether the concept of required deposit balance should be retained in cases where the amount of the deposit is so large that it would have a significant effect on the cost of credit. The term, for example, could be defined to include deposits exceeding a specified percentage of the amount of credit extended.

Residential mortgage transaction. This definition is unchanged from the May draft. In response to comments on this definition, the Board wishes to emphasize that the definition is not limited to first lien transactions or to those involving a principal dwelling.

Security interest or *security.* This definition is significantly narrower than that contained in the May proposal. It explicitly excludes from coverage many incidental interests in property that have been found to be security interest by various courts in the past. The board believes that this narrow reading properly implements the congressional intent to restrict this item to a simple but meaningful concept. This intent is evidenced by the language in the report on S. 108 of the Senate Committee on Banking, Housing and Urban Development that the committee expected that a loan secured by a car:

> * * * would require a statement indicating that the loan is secured by an automobile but would not require a listing of incidental or related rights which the creditor may have such as insurance proceeds or unearned insurance premiums, rights arising under, or waived in accord with state law, accessions, accessories, or proceeds.

The proposed definition makes a distinction between disclosure and rescission rights. Interests arising by operation of law (including a right of setoff) would not need to be disclosed as security interests; however, if such an interest (e.g., a mechanic's or materialman's lien) in a consumer's principal dwelling were acquired by a creditor, the transaction could be subject to the right of rescission.

The definition continues to include the usual kinds or security interests, for example, UCC security interests, real property mortgages and deeds of trust.

State. This definition is unchanged from the May draft.

(b) *Rules of construction.*

Sections 226.2(b)(1)–(5) contain the rules of construction that were previously found in §§ 226.2(ff), (gg), (hh), and (ii), respectively, of the May draft, with one addition. Paragraph (b)(3) has been added to make clear that "the act" refers to the Truth in Lending Act, unless otherwise apparent from the context. This rule eliminates the need for a complete citation to the act each time that term is used in the regulation. Paragraph (b)(4) deletes the phrase "to the extent applicable," because it is superfluous.

Section 226.3—Exempted transactions.

Except for the addition of a new paragraph (f) creating an exemption category for home fuel budget plans, § 226.3 is substantively unchanged from the May proposal.

Section 226.3(a), dealing with the business, agricultural, and organizational credit exemption, now contains a specific reference to commercial credit. In addition, the reference in the May proposal to an extension of credit "to a person other than a natural person," meaning credit to an organization, has been replaced by a reworded, separate subparagraph; it makes direct reference to governmental credit as one of the types of credit exempted.

Footnote 1 provides that credit exempted under paragraph (a) is still subject to the provisions of § 226.12, regarding issuance of credit cards and consumer liability for their unauthorized use. In the May proposal, this material was contained in the text of the paragraph.

There is an extensive definition of "agricultural purpose" in the statutory amendments to Truth in Lending. In the May proposal, that definition was incorporated into the regulation by means of Footnote 3 to § 226.3(a). In order to streamline the regulation, the Board has decided to delete that footnote. Its substance will be incorporated into the official commentary. As noted in the May proposal, the exclusion applies to a transaction involving real property that includes a dwelling, if the transaction is for agricultural purposes.

Although business and commercial purposes are not defined in the regulation, it is contemplated that the commentary will incorporate the substance of Board Interpretation § 226.302, which establishes the rule that business or commercial credit includes credit extended in connection with a dwelling containing more than four family housing units.

Several commenters asked that the Board define the term "primarily" as used in paragraph (a). The Board believes that each transaction must be looked at as a whole and evaluated to determine whether it constitutes consumer credit requiring disclosures. The creditor itself is normally in the best position to make this subjective determination. Where some question exists as to the primary purpose for a credit extension, the Board believes the better approach would be for the creditor to make the required disclosures.

The Board's staff has given some guidance in the past for determining whether the purpose of the credit is primarily business/commercial. For example, if a consumer purchases a single family dwelling for rental purposes, the credit transaction could be either business or consumer credit. Factors to consider might include: (1) The ratio of the rental income to the total income of the consumer, (2) the size of the transaction, (3) the degree to which the borrower will personally manage the property, and (4) whether the borrower's primary occupation is closely related to the rental of the property. This list is not all-inclusive and is intended to suggest the types of factors that a creditor should consider, since each transaction will merit an individual analysis. If there is a business purpose, however, the credit is business credit and is therefore exempt even if it is secured by the borrower's personal residence.

Paragraph (b) has been revised to include a reference to "personal property" (such as a mobile home, which may be classified as personal property in some states) used as the principal dwelling of the consumer, in place of "a dwelling."

Several commenters were concerned that cable television might not be exempt under the language of paragraph (c). The Board has added the phrase "or similar" following the word "radio" to resolve the matter.

In response to comments about the exemption for securities credit, the Board has reverted in paragraph (d) to the language used in the current regulation. Paragraph (e) was also changed in response to concerns expressed by the commenters; the word "consumer" replaces "lessee" in subparagraph (2)(ii).

A new exemption appears in this proposal. Currently, home fuel budget plans may or may not be consumer credit, depending on how they are structured. The Board is proposing a specific exemption for them. Under such plans, the fuel dealer generally estimates the total cost of fuel for the season, bills the customer for an average monthly payment, and makes an adjustment in the final payment for any difference between the estimated and the actual cost of the fuel. Fuel is delivered as needed, no finance charge is assessed, and the customer may withdraw from the plan at any time. The Board believes a nominal charge to cover the billing costs would not disqualify a budget plan for exemption, but will reevaluate the matter if it becomes aware of abuses in this area. The Board solicits comment on this proposed new exemption and on whether any other comparable plans should be considered for exemption.

During the last comment period, the Board received several requests—all from one geographic area—for a special exemption for consumer credit extended by trusts. In support of a proposed exemption, the commenters stated that loans made by trusts are unusual in terms (for example, low interest rate, no repayment schedule, irregular payments), that disclosures are therefore difficult to make, and that trust department personnel are generally unfamiliar with the Truth in Lending disclosure requirements. The Board solicits comment on whether compliance with Regulation Z poses an undue burden for trusts, whether it is a national or an isolated problem, and whether the same rationale for exemption might apply to profit sharing plans, employee benefit trusts, pension plans, and retirement plans. The Board would welcome recommended regulatory language if such an exemption is supported. In particular, the Board seeks any industry definitions that may exist of what is encompassed by the various forms of fiduciary accounts mentioned above.

Section 226.4—Finance charge.

Section 226.4 provides rules for determining the finance charge in open-end and closed-end credit transactions. While the format of this section is similar to the May draft, the current proposal reflects several substantive changes.

(a) *Definition.* Section 226.4(a) incorporates a tolerance for calculation and disclosure of the finance charge, similar to the annual percentage rate tolerance in §§ 226.14 and 226.22. Although a general tolerance for the finance charge has never been provided before, the concept is reflected in both the act and the current regulation in several ways. The Board is authorized by section 121(d) of the act to provide a tolerance for numerical disclosures other than the annual percentage rate. For purposes of administrative enforcement, Congress specifically authorized a finance charge tolerance in section 108, regarding restitution for understatements. The current regulation and the May proposal also contain several rules (§ 226.11(d) (3) and (4) of the May draft) which allow some margin of error in finance charge disclosures. These rules, however, are of limited applicability, since they are tied to specific causes.

In view of the congressional mandate to simplify the regulation and to ease the burden of compliance, the Board is proposing a tolerance for finance charges, based on the tolerance provided in § 108 of the act. Under the proposal, a finance charge would be considered accurate if the amount disclosed did not vary from the exact finance charge by more than the dollar equivalent of a ⅛ of 1 percentage point variation in the annual percentage rate. The Board solicits comment on this proposal, particularly on the amount of the tolerance.

Several commenters requested that the Board make explicit in the definition the position reflected in several staff opinion letters, including official staff interpretation FC-0054. Those letters provide that charges absorbed by the creditor as a cost of doing business, rather than separately imposed on the consumer, are not encompassed by the definition. While the new definition is intended to reflect this concept, the Board does not believe that the regulation need explicitly state this position.

The definition also continues to reflect the Board's policy that a charge imposed uniformly in cash and credit transactions (such as sales taxes, licenses, or registration fees) is not within the scope of the finance charge definition. However, the examples given in paragraph (a) of the May proposal have been deleted as unnecessary.

(b) *Examples of finance charge.* Section 226.4(b) incorporates both editorial and substantive changes. The caption for the paragraph has been amended to emphasize that the list of charges is illustrative rather than exhaustive.

The reference to "other system" of additional charges has been deleted from paragraph (b)(1) inasmuch as the charges listed in that paragraph sufficiently identify the types of charges intended to be covered.

A number of commenters asked the Board to reconsider its longstanding position that transaction charges and account charges of the type described in paragraph (b)(2) constitute finance charges. In the Board's view, these charges are encompassed in the definition of the finance charge and should be treated as such.

Paragraph (b)(3) retains a reference to an assumption fee as an example of a finance charge. An assumption fee would constitute a finance charge only when an assumption actually occurs and a fee is imposed, not at the time of the initial transaction.

Paragraph (b)(4) has been amended by adding application fees to the list of charges included in the finance charge. If an application fee covers charges that are explicitly excluded from the finance charge, such as a credit report fee in a real property transaction, that portion of the application fee would not constitute a finance charge. As a general rule, however, the proposal takes the position that application fees represent a cost of credit and should be included in the finance charge. Comment is solicited on this matter.

Paragraph (b)(5) has been amended by deleting the reference to single interest insurance. While single interest insurance would normally be included in the finance charge, unless specifically exempted by paragraph (d), a specific reference in paragraph (b)(5) seems unnecessary. Several commenters requested that the Board reinstate § 226.4(h) of the current regulation, permitting creditors to rely on the rates and classification in effect at the time of disclosure in determining the amount, unless the creditor has reason to know of any change. In the Board's view, a special rule for determination of these amounts is unnecessary; the general requirements regarding the basis for making disclosures, as set forth in §§ 226.5 and 226.17, should be applied.

The explanatory material that was contained in footnotes 4, 5, and 7 of the May proposal (regarding the premium amount to be included in the finance charge) and in footnotes 6 and 8 (concerning the meaning of "written in connection with") has been deleted from this draft. The substance of those footnotes, which continues to represent the Board's position, will be incorporated into the official commentary on the regulation.

Paragraphs (b)(5), (7) and (8) have been amended by adding the phrase "or other charge" after the word "premium." This represents a return to the terminology used in the current regulation.

Paragraph (b)(9) is unchaged from the May proposal. As noted in the earlier draft, present § 226.8(o), which provides special treatment for discounts offered for prompt payment of a credit obligation, has been deleted since trade discounts covered by that provision are no longer considered finance charges.

(c) *Charges excluded from finance charge.* Section 226.4(c) sets forth the charges that are excludable from the finance charge. This paragraph incorporates specific exceptions now found in § 226.4(c), (d), and (e) of the current regulation and current Board Interpretation § 226.407.

Paragraph (c)(1) excludes charges that are imposed for actual, unanticipated late payment. The Board considered incorporating into this provision the concept contained in Board Interpretation § 226.401. That interpretation establishes the rule that, in certain cases, if a seller imposes a late payment charge while continuing to extend credit to the consumer, the charge imposed for late payment is a finance charge for purposes of Regulation Z.

Upon reconsideration of this matter, the Board now believes that the further extension of credit to the consumer should not be determinative. It is only one of the factors that must be taken into account in deciding whether the charge is a bona fide late payment charge. While this change in position is not reflected in the regulation, it is contemplated that this revised interpretation will be included in the official commentary.

Paragraph (c)(2), as revised, differs from both the May proposal and § 226.4(d), its counterpart in the current regulation. Previously, overdraft charges were excluded from the finance charge unless there was a written agreement regarding the payment of the checks and the imposition of the charge. Under this proposal, an overdraft charge is exempt only if it relates to an inadvertent overdraft in a checking or a similar type of account. The Board believes that a charge imposed for honoring an instrument under any agreement between the institution and the consumer is a charge imposed for a credit extension and fits the general definition of a finance charge, whether or not the charge and the honoring of the check are reflected in a written agreement. The characterization of the charge will thus depend on whether "credit" has been extended, within the meaning of the regulation.

Paragraph (c)(3), regarding participation fees, is based on current Board Interpretation § 226.407 and has been changed in three ways from its counterpart in the May draft. First, the term "membership" has been replaced by "participation," which is a broader term encompassing any fees for access to a credit plan. Second, the paragraph has been broadened to apply to any credit plan, not merely credit card plans. The exception does not depend on the nature of the credit plan, but on the fact that the fee is not tied to a specific credit extension and is a condition of access to the credit plan itself. Third, the paragraph has been revised to clarify that such fees may be assessed on either a periodic or an annual basis.

Paragraph (c)(4), exempting certain realty charges, is similar to the May draft and reflects § 226.4(e) of the current regulation. The introduction expands the statutory language regarding the types of transactions to which the exceptions apply, by the addition of the phrase "or a residential mortgage transaction." This would include mobile home transactions, and similar credit extensions which are functionally the same as real estate transactions, even if state law characterizes the property as personal. In the Board's view, this change in language carries out the congressional intent to treat mobile home transactions and similar types of credit extensions in the same manner as traditional realty transactions.

Paragraph (c)(4)(i) reflects the current regulation by reincorporating the phrase "or similar purpose." The Board believes that the May draft may have been unnecessarily narrowed by the elimination of that language.

Paragraph (c)(4)(ii) adds "reconveyance" document fees to the list of documents to which that provision applies. Under this proposal, fees charged for the termination of security interests would be treated in the same manner as fees for the creation of a security interest. The Board solicits comment on this matter.

Paragraph (c)(4)(iii) is essentially unchanged from both the May draft and the current regulation, but the Board wishes to address two issues relating to this provision. First, the Board believes that the fees described need not be paid to third parties in order to be excluded, but may be assessed by a creditor for services performed by its employees. For example, a creditor may exclude an appraisal fee from the finance charge under this paragraph, even though the appraisal is conducted by the creditor's own staff. Second, a credit report fee may include a charge for the creditor's internal verification of information from third parties such as credit bureaus.

Paragraph (c)(5), which has no counterpart in the May proposal, is based in part on current Board Interpretation § 226.406. Seller's points normally are imposed on the seller in a real estate transaction, but may be passed on indirectly to the buyer in the form of a higher sales price. Because it is extremely difficult to determine whether such charges have actually been imposed on the buyer in an individual case, the current Board interpretation allows creditors to include seller's points in the finance charge as a matter of course in all cases, even if the points were not actually passed on. For purposes of comparison among various credit sources, a uniform rule regarding these charges is desirable and the Board proposes to exclude such charges from the finance charge in all cases. Comment is solicited on this issue.

Paragraph (c)(6) has been added to incorporate the substance of proposed Board Interpretation § 226.408, which was published by the Board in August 1978. Certain federal and state laws mandate a percentage differential between the interest rates on a time deposit and a loan secured by such deposits, which may result in the forfeiture by the consumer of some of the interest that otherwise would be earned on the deposit. This paragraph provides that the lost interest need not be included in the finance charge in such transactions. The Board specifically solicits comment on this proposal, particularly with regard to the issue of whether its application should be limited to an interest reduction imposed because a rate differential is required by law.

(d) *Insurance.* This paragraph sets forth the procedures for excluding credit life and property insurance premiums from the finance charge. It has been substantially changed from both the May draft and the current regulation in several aspects, as discussed below. In addition, several questions regarding the location of the disclosures called for by this paragraph in closed-end credit transactions are now addressed in § 226.17 of this regulation.

Paragraph (d)(1) has been revised to permit disclosure of the amount of the premium on a unit cost basis. This represents a departure from the current regulation, which generally has been interpreted as prohibiting disclosure of cost on this basis; the Board specifically solicits comment on this matter. Paragraph (d)(1)(iii) has been amended by adding a second sentence, allowing any consumer, whether or not an insured party, to sign the statement indicating a desire for the insurance. The words "or initials" have been added to make clear that either a signature or initials will satisfy the requirement.

Paragraph (d)(2) revises the special rules set forth in the May proposal for single interest insurance, and eliminates the distinction between blanket vendor's single interest insurance and ordinary single interest insurance.

Footnote 2 now incorporates current Board Interpretation § 226.404, permitting vendor's single interest insurance to be excluded from the finance charge if the insurer waives all right of subrogation against the consumer. Single interest insurance, as that term is used in the proposal, refers only to the types of coverage that would generally be included under the term "vendor's single interest insurance." The Board is aware that certain comprehensive insurance policies may include a variety of coverages, such as repossessed vehicle insurance, holder-in-due-course insurance, and instrument non-filing insurance, as described in Public Information Letter 1075. Those types of coverages do not constitute single interest insurance for purposes of the regulation.

Footnote 3 to paragraph (d)(2) makes clear that a creditor's reservation of the right to refuse an insurer, on a reasonable basis, does not by itself make the provisions of this section inapplicable. Paragraph (d)(2)(ii) has been expanded to permit disclosure of insurance premiums on a unit cost basis. This amendment reflects the approach taken in the revision to paragraph (d)(1), regarding the cost of credit life insurance.

(e) *Certain security interest charges.* Section 226.4(e) is similar to the May draft, with the addition of the phrase "taxes and" to paragraph (e)(1) to clarify that the types of charges described in that paragraph may include taxes as well as fees. The charges described in paragraph (e)(1) may be aggregated, rather than itemized according to the specific fees and taxes imposed. For purposes of closed-end credit disclosures, § 226.17 permits creditors to itemize the charges in paragraph (e) either separately or with other disclosures.

The caption has been changed in an effort to more accurately reflect the coverage of this paragraph, which addresses only costs associated with security interest. Comment is welcome on any other phrase, such as "Filing fees; nonfiling insurance," which might describe more precisely the charges to which paragraphs (e)(1) and (e)(2) apply.

(f) *Discounts.* This section corresponds to § 226.4(i) of the current regulation, and reflects several changes from the May proposal. Most of the changes are organizational, to make the provisions clearer and easier to understand.

In paragraph (f)(1) the language has been changed to comply with the statue, which states that a discount meeting the requirements of this provision "shall not constitute" a finance charge. As written in the May proposal, the exclusion of a discount that met the requirements of paragraph (f) appeared to be optional with the creditor.

Paragraph (f)(1)(ii) of this proposal corresponds to (f)(2) of the May proposal. The word "all" has been deleted as unnecesssary because of the phrase "whether or not they are cardholders" following "prospective purchasers." This change attempts to clarify that a merchant may offer a discount that is limited to members of a specific organization or to prospective purchasers who have an account at a particular financial institution. Such a discount is not subject to treatment under this provision. The restriction imposed by this provision applies only to a discount to induce payment by a means other than by use of an open-end credit card account and requires that such discounts be available to non-cardholders as well as cardholders.

A discount offered to a subgroup of purchasers or based upon any criteria other than cash versus credit would not be considered a finance charge under Regulation Z. If a merchant further limited the availability of the discount (within such a subgroup) based on whether a person paid for a purchase by cash or credit card, the discount would not become a finance charge subject to Regulation Z since other cash customers (who do not belong to the subgroup) pay the same price in a comparable cash transaction.

The language "in the seller's place of business" (in paragraph (f)(2) of the May proposal) and paragraph (f)(3) regarding advertising and telephone solicitations have both been deleted from § 226.4(f) of this proposal. These deletions do not represent a substantive change in the Board's position, however. In the Board's view, the material that has been deleted provided clarification of what is meant by "clearly and conspicuously." It is the Board's intention to incorporate the material into the official commentary.

In the Board's view, the "clearly and conspicuously" language of paragraph (f)(1) requires that a sign or display disclosing the availability of a discount be posted in the creditor's place of business. If a creditor solicits orders for property or services by other means (mail, telephone, advertising, etc.), and states in the solicitation or offer that consumers may pay by using a credit card or its underlying account, the creditor must also disclose the availability of the discount for payment in cash. In all situations involving a discount, the availability of the discount would have to be disclosed before the transaction had been completed by means of a credit card or its underlying account.

All of the footnotes to § 226.4(f) of the May proposal have been deleted or redesignated. The text of footnote 13 of the May proposal is now paragraph (f)(2), and implements the statutory provision to the effect that a discount excluded from the finance charge by virtue of this section shall not be a finance or other credit charge under state law.

Footnote 14 of the May proposal has been deleted as unnecessary; a discount for cash payment must meet all the conditions imposed by this section in order to be excluded from the finance charge.

Footnote 15 of the May proposal, defining "regular price," has been incorporated into § 226.2, which contains the definitions. Since the definition of regular price applies to this section and to § 226.12(g), this placement seems more appropriate.

Footnote 16 of the May proposal provided that a merchant may limit the availability of cash discounts based on type of property or service, a particular location of the merchant, and other distinctions not tied to a cash-versus-credit concept. This footnote has been deleted; its substance will be included in the commentary of the regulation.

(g) *Prohibited offsets.* Section 226.4(g) corresponds to § 226.4(f) of the current regulation and is the same as the May proposal.

Subpart B—Open-End Credit

In the May proposal, the provisions relating to open-end credit were in §§ 226.5 through 226.10. Section 226.5 of the May proposal (Disclosures) has been divided and redesignated to facilitate the regulation's use; it represents § 226.5 through 226.11 of this proposal.

Section 226.6 of the May proposal (Credit card transactions; special requirements) has been retitled (Special credit card requirements) and redesignated § 226.12.

Sections 226.7 of the May proposal (Billing error resolution), 226.8 (Determination of annual percentage rate), 226.9 (Right of rescission) and 226.10 (Advertising) have been redesignated §§ 226.13, §§ 226.14, §§ 226.15, and §§ 226.16, respectively.

Section 226.5—General disclosure requirements.

As did the May proposal, this proposal assembles in one place the general housekeeping requirements relating to open-end credit.

Proposed §§ 226.5(a) (Form of disclosures) and (b) (Timing of disclosures) correspond to the May proposal's §§ 226.5(a)(3), (a)(4) and (a)(5). Proposed paragraph (a) corresponds in part to paragraph (a)(3) (Time and form; general) of the May proposal. Proposed paragraph (a)(1) corresponds to paragraph (a)(3)(i) of the May proposal. The second sentence of paragraph (a)(3)(i) of the May proposal has been deleted as unnecessary.

Language in paragraph (a)(3)(i) of the May proposal provided that appropriate identifying language may accompany required terminology, and the following examples of permissible identifying language were given: the rate applied to a balance on a daily basis may be described as the "daily periodic rate;" payments on a loan account may be described as "loan payments." This language and the examples have been deleted in this proposal as inappropriate regulatory material; the Board intends, however, to incorporate this material in the commentary. Also deleted from the May proposal was language permitting the pluralization of required terminology. This language is regarded as inappropriate regulatory material that the Board intends to include in the commentary.

In order to promote flexibility in designing forms and to reduce the incidence of technical violations, the Board specifically solicits comment on whether the required terminology of § 226.7 *Periodic Statements,* with the exception of "finance charge" and "annual percentage rate", should be deleted from the regulation.

Proposed paragraph (a)(2) corresponds to paragraph (a)(3)(ii) of the May proposal and deals with disclosing the terms "finance charge" and "annual percentage rate" more conspicuously in certain instances. Other than editorial changes and the deletion of the parenthetical listing examples of ways to satisfy the "more conspicuous" standard, the paragraph remains unchanged. The deleted parenthetical suggested the use of capitalization, asterisks, bolder type, underlining, or a contrasting color. The Board intends to incorporate these examples in the commentary.

Unlike the May proposal, the present proposal does not contain a rule governing the inclusion of additional information on the initial disclosure statement or on the periodic statement. The additional information rule appeared in the May proposal in §§ 226.5 (a)(4)(ii) and (a)(5)(i). While the Board believes that additional information may be included on the initial disclosure statement and on the periodic statement, in its view, no special provision governing inclusion of additional information on a disclosure statement is necessary in light of the general requirement that Truth in Lending disclosures be made clearly and conspicuously. As the parenthetical in paragraph (a)(4)(ii) of the May proposal indicates, additional information could include the agreement or contractual provisions, explanations, state law disclosures (that are not inconsistent) or promotional material.

Language in paragraphs (a)(4)(ii) and (a)(5)(i) of the May proposal provided that both the initial disclosure statement and the periodic statement could be more than one page, as long as the disclosures were made together. Paragraph (a)(4)(ii) also affirmed present staff position in providing that any multiple-page initial disclosure statement constitutes an integrated document. This language is not reflected in this proposal; the Board, however, believes that both initial disclosure statements and periodic statements can be more than one page, as long as the pages constitute an integrated document. The Board intends to include this position in the commentary.

The timing provisions for the initial disclosure statement and the periodic statement have been combined in proposed paragraph (b) (Timing of disclosures). It corresponds in part to paragraphs (a)(4)(i) and (a)(5) (ii) and (iii) of the May proposal.

Proposed paragraph (b)(1), like the May proposal, requires that the initial disclosure statement be provided before the first transaction is made under the plan. A commenter correctly pointed out, in the Board's view, that the initial disclosure statement must be provided to the consumer before any membership, participation, or loan application fee, or similar charge is imposed on the consumer.

Proposed paragraph (b)(2) (i) and (ii) set out the timing rules for providing periodic statements. It corresponds to paragraph (a)(5) (ii) and (iii) of the May proposal and is virtually unchanged from the prior proposal. The words "at least quarterly" have been deleted from the first sentence of paragraph (a)(5)(ii) of the May proposal as redundant; periodic statements have to be furnished for *each cycle* at the end of which the account has a debit or credit balance of more than $1 or on which a finance charge has been imposed, and a cycle can be no longer than quarterly. (See § 226.2 for the definition of "billing cycle" or "cycle.")

The last sentence of paragraph (a)(5)(ii) of the May proposal provides that a creditor's following its standard procedures for uncollectible accounts shall be evidence that the creditor has deemed the account uncollectible. That sentence has been deleted as inappropriate regulatory material; the Board intends, however, to include the position in the commentary.

Language has been added in proposed paragraph (b)(2)(ii) to parallel the current regulatory requirement that the 14-day periodic statement requirement relates only to the imposition of an *additional* finance or other charge. In response to numerous commenters, the Board wishes to clarify that charges imposed regardless of the timing of a periodic statement (for example, transaction charges or activity charges) are not affected by this prohibition. Clarifying language to this effect has been added to this provision.

The relief provision regarding the 14-day time limitation is now footnote 4 in the proposal. Numerous commenters requested that the Board add computer malfunction to this relief provision. In the Board's view, such an expansion would be inappropriate; doing so could subject the consumer to the imposition of finance charges far more frequently than would the other occurrences.

Proposed § 226.5(c) (Multiple creditors; multiple consumers) eliminates from the May proposal the general statements that a creditor must provide disclosures to a consumer. The Board believes that this material is unnecessary and has revised the paragraph to address only multiple-creditor and multiple-consumer situations, where specific guidance may still be needed.

The first sentence has been redrafted to reflect the Board's concern that a consumer receive a complete document or set of disclosures that incorporates all of the required credit disclosures for that open-end credit plan. When multiple creditors are involved in an open-end credit plan, the Board believes that creditors should have flexibility in the way in which that set of disclosures is provided. For example, the creditors may agree to designate one creditor to assume that responsibility or the creditors may join in designing a single set of disclosures. The change in the paragraph is not intended to absolve any creditor in such transactions from liability for failing to make disclosures. Regardless of the arrangements made between creditors, each creditor in the plan is legally responsible for providing the disclosures and any one of them may be subject to liability for violations. However, fewer questions are likely to arise regarding multiple-creditor situations because the revised definition of "creditor" will aid in the determination of creditor responsibilities.

As did the May proposal, this proposal in paragraph (c) implements the new statutory language which requires that the creditor make disclosures to a primarily liable consumer.

Section 226.5(a)(2) of the May proposal, summarizing what disclosures must be made, has been deleted from this proposal as superfluous.

Proposed § 226.5(d) (Basis of disclosures and use of estimates) corresponds to § 226.5(a) of the May proposal. The first sentence of paragraph 5(a)(6)(i) of the May proposal has been deleted as unnecessary. The remainder of paragraph (a)(6)(i) has been combined with that of paragraph (a)(6)(ii) to form the new § 226.5(d).

Unlike the May proposal, which required that the disclosures reflect the terms actually agreed upon even if they differed from the written obligation, this proposal states that the disclosures shall be based on whatever constitutes the legally enforceable obligation between the parties. Consequently, in the preferential employee rate situation, the correct periodic rate/annual percentage rate disclosure would depend on what is legally enforceable. If the higher rate were the enforceable term, however, the creditor would not be prohibited from additionally indicating any concession made in a term. In a voluntary payroll deduction plan where the contract provides for payment of a certain amount by the last day of the month but the required amount is deducted biweekly from payroll, the contract term is undoubtedly the legally enforceable term and, therefore, represents the appropriate disclosure.

Proposed § 226.5(e) deals with the effect of subsequent events on disclosures already provided and corresponds to § 226.5(a)(7) of the May proposal. Paragraphs (a)(7)(i) and (ii) of the May proposal have been combined and paragraph (a)(7)(iii), dealing with the use of inserts to reflect a new term, has been deleted as inappropriate regulatory material. The Board intends, however, to incorporate this position in the commentary.

Section 226.6—Initial disclosure statement.

Proposed § 226.6 corresponds to § 226.5(b) of the May proposal and sets forth the rules regarding the disclosures to be made to a consumer upon opening an open-end credit account. The introductory paragraph remains the same except for the deletion of unnecessary language and a cite change.

Except for relocating some language to a footnote, proposed § 226.6(a)(1) corresponds and is identical to § 226.5(b)(1)(i) of the May proposal. It requires that a creditor give a statement of when finance charges begin to accrue. It is not intended that creditors disclose a specific date when finance charges will begin to accrue; a general explanation could be provided about finance charges beginning to run. For example, a creditor may disclose that a consumer has 30 days from the closing date to pay the new balance before finance charges would begin to accrue on any new purchases made on the account.

Proposed paragraph (a)(1) also requires that where no free period exists (i.e., no time period exists within which any credit extended may be repaid without incurring a finance charge), that that fact be disclosed. The Board wishes to clarify that this in no way requires use of the phrase "no free period"; rather, the requirement may be satisfied by stating, for example, "the finance charge begins on the date of each advance."

Proposed § 226.6(a)(2) corresponds to § 226.5(b)(ii) of the May proposal, and requires disclosure of any periodic rate that may be imposed, together with the range of balances to which it is applicable and the corresponding annual percentage rate. It remains substantially the same as the May proposal except for placing some language in a footnote. The Board would point out that, where credit plans involve the application of different periodic rates for different types of transactions (for example, purchases and cash advances) or where advances are secured by different types of collateral, the different rates and their applicability must be clearly disclosed.

Footnote 7 has been added to clarify a creditor's responsibilities under this paragraph for a variable rate program. In addition to providing the information required by paragraph (a)(2), the creditor must also indicate on the initial disclosure statement: (1) That the periodic rate(s) and annual percentage rate(s) are subject to change; (2) the conditions under which such rates may change; and (3) any limitations on the rates. In the Board's view, a creditor would not have to disclose any limitations imposed by law, such as state usury laws, and need not provide a change in terms notice under § 226.9(c)(1) at the time of the rate change.

The Board would point that, as in the case of closed-end credit variable rate transactions, these disclosures *must* be made to the consumer. In light of the increased popularity of variable rate plans, these disclosures are not optional, as present Board Interpretation § 226.707 seems to imply; their disclosure does not merely serve to relieve a creditor of the responsibility to provide a change in terms notice.

Proposed § 226.6(a)(3) corresponds to § 226.5(b)(1)(iii) of the May proposal; it deals with disclosure of the method of determining the balance upon which the finance charge may be computed. Language that provided an example of what should be included in the explanation has been deleted as unnecessary in light of the model clauses contained in the appendix in this regard.

In addition, footnote 18 of the May proposal has been deleted. That footnote incorporated Board Interpretation § 226.706 and provided that a creditor need not describe the manner in which payments and other credits are allocated. The footnote, like § 226.706 of the current regulation, intends to relieve the creditor of the responsibility to disclose either: (1) That payments are applied first to finance charges, then to purchases, and then to cash advances, or (2) that payments may be applied to late charges, overdue balances, and finance charges before being applied to the principal balances. The deletion of this footnote does not represent a change in the Board's position. Rather, it is considered to be inappropriate regulatory material. The Board intends to incorporate the position of the Board Interpretation and the May proposal's footnote in the commentary. (Footnote 25 to § 226.5(c)(6) of the May proposal, now § 226.7(f), has been deleted for the same reason.)

Proposed § 226.6(a)(4) corresponds to § 226.5(b)(1)(iv) of the May proposal; it reflects editorial changes and the deletion of an example as unnecessary. It also does not reflect footnote 20 of the May proposal. That footnote identified examples of finance charges other than periodic rates; it has been deleted as unnecessary, since these examples already appear in § 226.4. (Footnote 24 to § 226.5(c)(5) of the May proposal, now § 226.7(e), has been deleted for the same reason.)

Proposed § 226.6(b) corresponds to § 226.5(b)(2) and requires disclosure of any charges (other than finance charges) that may be imposed as part of the plan. Many commenters requested that the Board further define "other charges." The purpose of requiring that other charges be disclosed is to insure that consumers are aware of all significant charges that might be incurred as the result of entering into an open-end credit plan. Therefore, to some extent it is expected that creditors will make their own determination as to whether a charge is an "other charge" based on the relationship of the charge to the plan. While the Board is unable to provide an exhaustive list of "other charges," as requested by many commenters (given the variety of credit programs), it is hoped that the following discussion will address most questions.

Footnote 21 of § 226.5(b)(2) of the May proposal listed examples of "other charges" and also listed examples of exclusions from the "other charges" category. As that footnote provided, in the Board's view, membership or participation fees in open-end credit plans are considered "other changes." Late payment charges, fees for providing documentary evidence requested under proposed § 226.13, over-the-credit-limit charges and fees listed in proposed §§ 226.4 (c) and (e) are considered "other charges." In contrast, fees charged for documentary evidence of transactions for income tax purposes (in addition to other examples discussed below) would not be considered "other charges." The deletion of the footnote is not intended as a substantive change. The Board intends to incorporate the substance of the footnote in the commentary.

Commenters expressed concern that credit life insurance has been excluded from "other charges." The Board believes that disclosing the cost of voluntary credit life insurance on the initial disclosure statement as an other charge is unnecessary since disclosure is already required by § 226.4(d). In the Board's view, the same conclusion would apply not only to all types of voluntary insurances, such as disability insurance, but it would also apply to required property insurance that is not part of the finance charge under § 226.4(d)(2). Required credit life or disability would, of course, be disclosed as a finance charge on the initial disclosure statement.

Where an open-end credit plan is secured by real property, charges imposed in connection with real property transactions, which are specifically excluded from the finance charge in § 226.4(e) of the current regulation and § 226.4(c) of this proposal, would be other charges under § 226.6(b). Similarly, the charges identified in § 226.4(e) of this proposal regarding fees for perfecting security interests would also be other charges.

Several commenters requested further guidance from the Board in distinguishing between late payment charges, which are considered "other charges," and amounts payable by consumers for collection activity after default (for example, attorney's fees, statutory interest rates, and reinstatement or reissuance fees), which are not considered "other charges." The Board believes that charges that are imposed more frequently on consumers without considering them actually in default, even though they may be technically in default, should be disclosed (for example, the consumer is often given the chance to remedy unintended and inadvertent acts such as late payments and exceeding the credit limit).

Proposed § 226.6(c) corresponds to § 226.5(b)(3) of the May proposal and deals with the security interest disclosure. The language has been redrafted to parallel the statute and to improve readability; no substantive change is intended, however.

In light of the statutory change to section 127(a)(6), this proposal, like the May proposal, eliminates the present requirement to identify the type of security interest; in other words, the creditor need not expand on the term "security interest."

The Board wishes to clarify the applicability of the security interest disclosure to plans that involve the taking of security for advances above a certain amount. Commenters pointed out that a problem exists in identifying on the initial disclosure statement the type of property in which a security interest will be taken because the collateral often is not identified until the consumer decides to get an advance above the unsecured balance limit.

In the Board's opinion, in such instances, creditors must disclose the information that is available to them at the time of providing the initial disclosures. For example, if the creditor initially disclosed the security interest as one in "household goods" but later, when an advance was going to exceed the unsecured balance limit, it was determined that a security interest in only *certain* household goods would be taken, the creditor would be required to disclose to the consumer the collateral that was actually being pledged at that time. Such disclosure would be made by providing the consumer with a change in terms notice required by § 226.9(c) of the proposal. (That section has been modified to facilitate compliance with the security interest disclosure by lifting the timing requirements in the case of a mutually agreed upon change in collateral.)

Of course, when the security interest actually taken is the same as that identified in the initial disclosures, a change in terms notice need not be given. For example, if the initial disclosures provided for a security interest to be taken in household goods and the actual security interest is eventually taken in *all* household goods, there would be no change in terms requiring additional disclosure.

In response to a request from several commenters, the Board wishes to clarify that creditors need describe only the major property securing the credit transaction, and not any incidental or related rights that the creditor may have in the property. For example, a security interest in insurance proceeds or unearned insurance premiums need not be disclosed. (See the security interest definition proposed in § 226.2.)

In the absence of a corresponding statutory provision, the minimum periodic payment requirement in § 226.7(a)(8) of the current regulation and § 226.5(b)(4) of the May proposal has been deleted from this proposal. While the Board is of the opinion that a creditor would routinely provide such information to the consumer, the Board solicits comment on whether such an area is a source of potential abuse requiring regulation.

Proposed § 226.6(d) corresponds to § 226.5(b)(5) of the May proposal and deals with the billing rights statement requirement. It has been reworded to describe more precisely the expected content of the statement. Footnote 22 of the May proposal regarding what constitutes substantially similar has been deleted; the content of that footnote is now contained in the appendix.

The Board solicited comment in the May proposal on a possible creditor identification requirement. The Board believes that to impose such a requirement would be contrary to the simplification effort, especially since the consumer is provided with an address to use for billing inquiries, and no significant need has been evidenced for such a requirement.

Section 226.7—Periodic statements.

Proposed § 226.7 corresponds to § 226.5(c) of the May proposal; it requires that consumers be provided with periodic statements and identifies the information that must be reflected on them. The language "at least quarterly" has been deleted from the introductory paragraph since the requirement for quarterly periodic statements is already addressed by the definition of "billing cycle" in § 226.2 and the timing requirements in § 226.5.

Proposed § 226.7(a) corresponds to § 226.5(c)(1) of the May proposal; it deals with the "previous balance" disclosure requirement. Numerous commenters expressed concern about the language in the May proposal regarding the disclosure requirement when a previous balance is a credit balance. Although the May proposal intended no substantive change from the current regulation, this proposal returns to the current regulatory language. (See existing § 226.7(b)(1)(i).) As has always been the case, the words "credit balance" need not be used; a symbol or an abbreviation will suffice as long as it is explained on or with the periodic statement.

The last sentence of the paragraph, which also appeared in the May proposal, incorporates a present staff position permitting disclosure of a separate previous balance for each type of transaction.

Proposed § 226.7(b) requires that each credit transaction be identified on the periodic statement; it is unchanged from § 226.5(c)(2) of the May proposal.

Proposed § 226.7(c) corresponds to § 226.5(c)(3) of the May proposal. The majority of comments on this paragraph, which requires that creditors disclose the amount and date of crediting any payment or other credit, were in favor of the deletion of the current regulation's requirement (see existing § 226.7(b)(1)(iii)) that the type of a credit be specifically identified. The paragraph is unchanged in the current proposal. Where a credit for correction of a billing error appears on a periodic statement, however, § 226.13 requires clear identification of that type of credit.

Proposed § 226.7(d) corresponds to § 226.5(c)(4) of the May proposal and deals with disclosure of any periodic rate used to compute finance charges and its corresponding annual percentage rate. Neither this proposal nor the May proposal reflects the parenthetical phrase in the current § 226.7(b)(1)(v) since the paragraph's language can be read to require that the periodic rate(s) used to compute the finance charge must be disclosed whether or not applied during the billing cycle.

A footnote has been added to this paragraph to clarify the disclosure requirements for variable rate programs. (See preceding discussion in § 226.6.)

The present § 226.7(b)(1)(v) and the May proposal permitted the use of the alternative terms "corresponding annual percentage rate," "corresponding nominal annual percentage rate," and "nominal annual percentage rate." While the comments did not indicate a serious need for these alternative terms, the Board does not wish to require form changes by prohibiting their use. Consequently, while they are not listed in this proposal (in light of the fact that the Board does not believe their use is widespread), the Board would not regard their use as inappropriate. This position will be preserved in the commentary.

Language from the May proposal has been retained (with some editorial changes) to indicate that, where different periodic rates are applied to different types of transactions, those periodic rates and their corresponding annual percentage rates must be disclosed, together with the types of transactions to which they apply.

Section 226.7(e) corresponds to § 226.5(c)(5) of the May proposal and requires disclosure of the amount or method of computing the amount of any other type of finance charge (other than periodic rate(s)) that may be imposed. It is unchanged from the May proposal, except for the deletion of footnote 24. (Reference should be made to the preceding discussion on the deletion of footnote 20 of the May proposal. That footnote gave examples of "other types of finance charges.")

Several commenters objected to the requirement that creditors disclose other types of finance charges *whether or not they are imposed during the billing cycle*. The Board would point out that the present regulation (see § 226.7(b)(1)(v)) already recognizes the importance of these types of finance charges in that minimum charges that may be applicable to an open-end account must be disclosed. Since the types of charges covered by this paragraph are becoming more prevalent in open-end credit plans, and because the disclosure of the periodic rate is both an actual and a prospective disclosure, the Board believes that the possibility of the imposition of these types of finance charges should also be disclosed in order to present the finance charge rules without being misleading.

Section 226.7(f) corresponds to § 226.5(c)(6) of the May proposal and deals with disclosing the dollar amount of the balance on which the finance charge is computed, together with an explanation of how that balance was determined. (See § 226.6 for an explanation on deleting the footnote on payment allocation.) Unlike the May proposal, this paragraph only requires disclosure of those balances to which a *periodic rate* was applied. To require the specific and separate identification of each balance involved in computing individual transaction charges or activity charges would significantly complicate the periodic statement. For example, if a consumer obtains a $1500 cash advance subject to both a 1% transaction fee and a 1% monthly periodic rate, the creditor would only be required to disclose the balance subject to the monthly rate. In the Board's opinion, adequate consumer protection is achieved under the disclosure requirements of §§ 226.6(a)(4), 226.7(g) and 226.8(b) in such an instance.

If portions of the balance are subject to different periodic rates, however, the Board contemplates that the creditor will separately disclose each balance. For example, if the monthly rate applied to purchases is 1½% for balances up to $500 and 1% for balances over $500, the creditor would be required to disclose two separate finance charge balances for a cycle in which both rates were applied.

With regard to existing Board Interpretation § 226.703 regarding the disclosure of the balance when one or more daily periodic rates are imposed, the Board intends to incorporate the positions in that interpretation in the commentary.

Proposed § 226.7(g) corresponds to § 226.5(c)(7) of the May proposal and requires disclosure of the amount of the finance charge debited or added to the account during the billing cycle; it is essentially unchanged from the May proposal. The language of the first sentence has been changed to read (as does the current § 226.7(b)(1)(iv)) "any" finance charge debited or added to the account during the billing cycle must be disclosed. As in the present regulation, a *total* finance charge disclosure is not required. The last sentence of this paragraph, which incorporates Board Interpretation § 226.701, has been clarified to indicate that, where there is more than one periodic rate, the finance charge attributable to *each rate* need not be separately itemized and identified. Footnote 26 to § 226.5(c)(7) of the May proposal has been deleted as inappropriate regulatory material. That footnote provided that creditors that do not debit or add on finance charges during a billing cycle, but instead reflect the amount being allocated from each payment to finance charges, need not disclose any finance charges that may have accrued between the date of the last payment and the closing date. The Board intends to incorporate this position in the commentary and to expand its applicability to both the previous balance and new balance disclosures.

Section 226.7(h) corresponds to § 226.5(c)(8) of the May proposal; it requires that the annual percentage rate be disclosed (in accordance with proposed § 226.8) whenever a finance charge is imposed during the billing cycle. As does the May proposal, this proposal provides that, where an annual percentage rate cannot be determined because there is no outstanding balance, no annual percentage rate need be disclosed. The current proposal no longer requires, as the May proposal did, that the creditor disclose the fact that no annual percentage rate can be disclosed. The majority of commenters agreed that no annual percentage rate could be determined in these circumstances; they were opposed.

however, to the requirement in the May proposal that the creditor disclose that fact, claiming that such a disclosure would be meaningless and confusing to consumers.

Proposed § 226.7(i) corresponds to § 226.5(c)(9) of the May proposal and implements a present staff position that charges other than finance charges that are imposed be reflected on the periodic statement. Except for minor editorial changes, this paragraph is unchanged from the May proposal.

Section 226.7(j) requires disclosure of the closing date of the billing cycle and of the new balance. It corresponds to § 226.5(c)(10) of the May proposal. In response to commenters' concerns, this proposal returns to the current regulatory language to describe the disclosure requirement when the new balance is a credit balance. (See discussion of proposed § 226.7(a).)

Proposed § 226.7(k) corresponds to § 226.5(c)(11) of the May proposal and deals with the disclosure of any free period permitted. Language has been added to clarify that this disclosure requirement, like that of the present § 226.7(b)(1)(ix), is related to avoiding the imposition of *additional* finance charges rather than finance charges that may have accrued in the ordinary course. Language previously included in the body of the regulation is now reflected as footnote 11.

Section 226.7(l) of the proposal corresponds to § 226.5(c)(12) of the May proposal and requires that an address be provided on the periodic statement for use in submitting billing error inquiries. The "Send inquiries to" language requirement has been deleted as unnecessary in light of the general requirement in § 226.5 that Truth in Lending disclosures be made "clearly and conspicuously."

Section 226.8—Identification of transactions.

This section of the proposal corresponds to § 226.5(d) of the May proposal and § 226.7(k) of the current regulation and deals with the requirement to identify each transaction on the periodic statement. Throughout the section, the term "document evidencing the credit transaction" has been replaced by the phrase "receipt or other credit document." The change is made for editorial reasons, no substantive change is intended.

Footnote 27 of the May proposal, which corresponds to the present proposal's footnote 12, pointed out the liability implications of a creditor's failure to disclose information required by this paragraph. Sections 226.7(k)(4) and (5) of the current regulation and §§ 226.5(d)(4) and (5) of the May proposal also contain specific provisions allowing the creditor to substitute or omit certain information when it is unavailable, so long as the creditor treats inquiries about the transactions as erroneously billed amounts and automatically provides free documentation. Except with regard to foreign transactions, a creditor may only take advantage of these provisions if it maintains procedures reasonably adapted to procure the required information. (When disclosing foreign transactions, a creditor need not even maintain such procedures to be permitted to omit information.) Since the standard in footnote 27 appears to overlap with paragraphs (d)(4) and (5) of the May proposal, the present proposal combines all of the rules for failing to disclose information. Note that under the current proposal, no substitute information is needed when required information is not disclosed. Also, it is contemplated that the creditor need no longer show that information is actually unavailable, only that the creditor has maintained reasonable procedures to procure it.

Section 226.8(a)(1) of the proposal contains identification requirements for purchase transactions; it is substantively unchanged from the May proposal. Editorial changes have been made, however.

The May proposal and the current regulation state that a facsimile draft (for example, a draft in which the required information is typed in, as opposed to a duplicate copy) is not considered an "actual copy of the document evidencing the transaction" for purposes of this section. The reference to a facsimile draft is deleted from the present proposal as being inappropriate regulatory material, but the commentary would preserve this position.

Footnote 28 of the May proposal provided that the creditor complies with the requirement to disclose the amount and date by disclosing this information as supplied by the seller. The present proposal deletes this footnote, as well as footnote 32 of the May proposal, as being unnecessary. Under footnote 12 of the present proposal, the creditor is relieved from civil liability for failure to identify transactions as required if it maintains reasonable procedures to procure the information. The Board believes that utilizing the information supplied by the seller without an independent investigation is part of a reasonable procedure. If the information is wrong, of course, the creditor would correct the account as provided in footnote 12.

The substance of § 226.8(a)(2) is also unchanged from the May proposal except for editorial changes, including placing some material in a footnote. Footnote 29 of the May proposal, which provided guidance on determining whether a creditor and seller are the same or related persons, has been deleted from the present proposal. That footnote provided, for purposes of this section, that franchised or licensed sellers of a creditor's product are related to the creditor; sellers that assign or sell open-end consumer sales accounts to a creditor or arrange for credit under an open-end credit plan that allows the consumer to use the credit only in transactions with that seller are also related to the creditor. The footnote further provided that a person is not related to the creditor simply because an agreement or contract exists under which the person is authorized to honor the creditor's credit card, or because the person and the creditor have a corporate connection if that connection is not obvious from the names used by the person and the creditor. Moreover, the footnote stated that transactions with third party sellers resulting from promotional material or solicitations mailed by the creditor may, at the creditor's option, be described as transactions in which the seller and the creditor are the same or related persons. The Board intends to preserve these positions in the commentary.

Paragraph (a)(2) requires that the creditor make a brief identification of the property or services purchased. Footnote 30 to the May proposal stated that designations such as "merchandise" and "miscellanous" are insufficient, but that identification may be made by reference to the name of a department that conveys the identification of the types of property or services available there, or by a symbol relating to an identification list printed on the statement. The present proposal deletes footnote 30 of the May proposal as being inappropriate regulatory material; however, the same position would be preserved in the commentary to the regulation. The commentary would also incorporate the present staff position which provides that designations such as "second-hand goods" or "promotional items" are insufficient property identifications under this section.

The substantive requirements of § 226.8(a)(3) are also unchanged from the prior proposal. Editorial changes have been made, however. Footnote 32, which provided that the debiting date may be substituted for the transaction date in a mail order transaction, has been deleted from the present proposal; however, the Board intends to preserve the same position in the commentary.

Footnote 33 of the May proposal also has been deleted from the current draft as inappropriate regulatory material, but would be included in the commentary. That footnote provided that a seller's name is sufficiently disclosed if it appears in the form used in the sales slip, or is a more complete spelling of a name that was alphabetically abbreviated on the sales slip. In addition, the Board believes that a creditor may reasonably abbreviate the seller's name on the periodic statement even if the name appears in a more complete spelling on the sales slip.

Paragraph (a)(3) requires disclosure of the city and state or foreign country where the transaction took place. This merely simplifies the May proposal, which required disclosure of the "address," but then explained that "address" meant the city, and state or foreign country.

The May proposal provides that the creditor may use understandable and generally accepted abbreviations. The present proposal deletes this explanatory material as being inappropriate regulatory material but the Board intends to include this position in the commentary. Footnote 15 of the present proposal, which corresponds to footnote 34 of the May proposal, allows the creditor to omit the address or provide some suitable designation to assist the consumer in identifying the transaction when no meaningful address is readily available in three limited circumstances. The present proposal deletes examples of suitable designations as inappropriate regulatory material, but the commentary would incorporate the following examples: first, when a transaction takes place in a location that is not fixed—for example, aboard a public conveyance such as an airplane—the flight number, or "flight from (point of departure) to (destination)" would be sufficient; second, when a transaction takes place in the consumer's home, "consumer's home" would be sufficient; and third, when a transaction is the result of a telephone or mail order, "telephone order" or "mail order" would be sufficient.

Section 226.8(b) deals with the disclosure requirements for nonsale credit transactions. The examples of nonsale credit, cash advance or overdraft loans, which were in the introductory language to paragraph (b), have been deleted as being inappropriate regulatory material; they will be listed in the commentary. The statement that a facsimile draft is not considered an "actual copy of the document evidencing the transaction" also has been deleted, but the commentary would preserve this position. In addition, the statement that a readily identifiable trade name may be used to characterize a transaction for purposes of paragraph (b)(2) has been deleted. The commentary would also preserve this position.

In order to facilitate compliance with the regulation's requirements, paragraphs (b)(1) and (2) both permit disclosure of the same date information. The Board notes one change in particular, proposed § 226.8(b)(2) permits the use of the debiting date in nonsale credit transactions in the descriptive billing situation. This alternative is already available to creditors that have overdraft checking plans and is also available to a limited extent for other nonsale credit plans. Adopting the debiting date rule eliminates the need for several different rules that contribute to complexity, and it eliminates the need for a special provision whose use is limited in application to a relatively narrow fact situation.

Section 226.5(d)(3) of the May proposal, which relates to transactions billed in precomputed installments, has been deleted. That proposal would have required all creditors to disclose the transaction date and total transaction amount (together with other identifying disclosures) on the first periodic statement on which any portion of the transaction is billed. There would have been no specific requirement for identification of the subsequent installments debited to the account on later periodic statements. Comment was solicited on whether the requirements of this paragraph would facilitate compliance, better inform the consumer, be operationally feasible, and provide consumers with sufficient information on subsequent statements to avoid confusion.

Rather than include a provision in the regulation on transactions billed in precomputed installments, the Board believes that the rule is better located in the commentary. After reviewing the comments which presented various persuasive positions, the Board believes that consumers would be adequately protected if the creditor disclosed on the first periodic statement reflecting the transaction the full amount of the transaction together with the date the transaction *actually* took place; or if the creditor reflected the amount of the first installment and the date of the transaction or the date that it was debited to the account. In either event, subsequent periodic statements should reflect each subsequent installment due, together with any other identifying information required by this section; the debiting date may be used as the date of the transaction.

Sections 226.5(d)(4) and (5) of the May proposal have been deleted, as previously noted.

Section 226.9—Subsequent disclosure requirements.

(a) *Furnishing statement of billing rights.* Section 226.9(a) of the proposal corresponds to § 226.5(e) of the previous proposal. This section implements the amended act, containing the requirement that the long form billing rights statement be sent at least once per calendar year, at intervals of not less than six months and not more than 18 months, to each consumer entitled to receive a periodic statement for that billing cycle. The Board solicited comment on whether *all* consumers should receive the billing rights statement as opposed to only those entitled to receive periodic statements for the particular cycle selected by the creditor. While some commenters believed that all consumers should receive the long form billing rights statements at least once a year, others urged the Board to retain the requirement in the May proposal. In light of the statutory language and to reduce expense, the present proposal requires that the annual billing rights statement be sent only to those consumers entitled to receive a statement for the cycle selected by the creditor.

Section 226.9(a)(2) of the present proposal retains the creditor's option of sending a summary of the consumer's billing rights with each periodic statement. The present proposal deletes the provision in the May proposal permitting the creditor to place the summary statement on a portion of the periodic statement that must be returned to the creditor (for example, the payment stub). The Board notes that the amount of information required in the summary statement has been reduced. Moreover, the present proposal allows the use of multiple-page periodic statements and deletes the specific location requirements set forth in § 226.7(c) of the current regulation. Because of this added flexibility in designing statements, and the shortening of the alternative statement, and given the importance of providing consumers with sufficient information to assert errors under the Fair Credit Billing Act, the Board believes that the alternative statement should be in a form that the consumer may keep.

(b) *Supplemental credit devices and additional features.* Proposed paragraph (b) deals with disclosures for supplemental credit devices and additional features. It replaces, with respect to disclosures for supplemental credit devices, § 226.5(f) of the May proposal which corresponds to § 226.7(j) of the current regulation. This proposal addresses, in addition to supplemental credit devices, the disclosure requirements for additional credit features that are added to an existing open-end credit account.

The proposal eliminates the distinction, which was included in the May proposal, between solicited and unsolicited credit devices and features, and simply requires that the finance charge disclosures of proposed § 226.6(a) be furnished if the device is provided or the feature is added more than 30 days after initial disclosures. The provision also requires that, where a device is provided or a feature is added *within* 30 days, disclosures must be provided if the device or feature involves finance charge terms different from those previously disclosed. As this provision requires, the disclosures must be made before the consumer uses the device or additional feature for the first time.

In accordance with the current regulation, language has been added to exclude from the disclosure requirements credit devices sent as a renewal or resupply.

The portion of footnote 38 of the May proposal, which lists examples of credit covered by this provision (blank checks, payee-designated checks, blank drafts or orders or authorization forms for issuance of checks) has been deleted as inappropriate regulatory material. The examples will be reflected in the commentary, however. As footnote 38 of the May proposal provided, this provision does not apply to checks used in conjunction with a checking account, even though such checks may also activate a cash advance under an open-end credit plan.

This proposal provides the creditor with flexibility in determining the manner in which the disclosures will be made. Unlike the current regulation, but in accordance with the May proposal, this proposal allows the disclosures to appear with other material. In the Board's view, these disclosures, like any Truth in Lending disclosures, must be made clearly and conspicuously. This proposal no longer includes language requiring that the finance charge disclosures be highlighted. Consequently, where the finance charge disclosures are provided with other Truth in Lending disclosures, the finance charge disclosures need not be referenced as the current regulation requires.

(c) *Change in terms.* Section 226.9(c), which corresponds to § 226.5(i) of the May proposal and § 226.7(f) of the current regulation, outlines the requirements for notifying consumers in the event a creditor makes a change in the terms of the consumer's account. The present proposal reflects a restructuring and clarification of the May proposal, and addresses problems raised by the comments.

Proposed § 226.9(c)(1) states the general rule about the types of term changes that require notice to the consumer and sets forth the timing and format requirements.

The Board solicited comment on whether the 15-day time period should be changed to 21 days to be consistent with the term change requirement in Regulation E. Comment was divided on this point; a great many commenters that are not involved in electronic fund transfers considered it unfair to increase the time requirement. Futhermore, commenters pointed out that the regulation in no way precludes a creditor from providing the notice earlier than 15 days. For these reasons, the present proposal retains the 15-day minimum requirement.

Certain commenters also were concerned at having to give prior notice to all consumers whose accounts may be affected, as proposed to those consumers to whom a periodic statement would be sent for that billing cycle. The requirement contained in the proposal is similar to that in existing § 226.7(f), which requires that prior notice of changes in the most important terms be sent to all consumers. The present proposal also reduces, from the current regulation, the term changes requiring prior notice, so no additional burden should result from the proposal's requirement.

The prior proposal had changed the timing requirement for the notice from 15 days prior to the billing cycle in which the change would be effective to 15 days prior to the effective date of the change. Commenters expressed some confusion about when a particular change goes into effect. In the Board's view, a change that clearly has no retroactive impact, such as the imposition of a transaction fee, would require notice 15 days prior to the date on which the fee will be imposed on transactions. A change in the balance computation method, in contrast, would require notice 15 days prior to the billing cycle in which the change was to be effective.

Commenters questioned whether a new initial disclosure statement could be provided in lieu of a separate change in terms notice as long as the statement was sent within the time limits. When a term is changed, it must be disclosed clearly and conspicuously as the general rule in § 226.5 requires. Consequently, in the Board's opinion an initial disclosure statement reflecting the new term would comply with the change in terms notice requirements, only as long as the change is either highlighted in some way on the initial disclosure statement or the initial disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

Paragraph (c)(1)(ii) lists those circumstances under which the creditor is still responsible for giving the change in terms notice, but is excused from the 15-day timing requirement. The first part of proposed paragraph (c)(1)(iii), which corresponds to the second part of paragraph (i)(4) of the May proposal, relieves the creditor from the timing requirements when a consumer specifically agrees to the change. This might happen, for example, when a consumer goes to the creditor to request a substitution of collateral.

The Board notes that a number of programs allow consumers to skip or reduce one or more payments during the year, or involve temporary reductions in finance charges. 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. The Board contemplates that, if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption), no change in terms notice would be required either prior to the reduction or upon resumption of the higher rates. Otherwise, the creditor would have to give notice prior to resuming the original schedule or rate even though no notice would be required *prior* to the payment or finance charge reduction.

Paragraph (c)(2) of the present proposal describes in one place those situations in which the creditor is completely excused under this regulation from giving a change in terms notice. This paragraph corresponds to the second sentence of (i)(1); paragraph (i)(2); the first part of (i)(4); and paragraph (i)(5) of the May proposal. It deletes as unnecessary the separate provision in the May proposal that notice is not required when there is a change in the collateral requirements.

When the change is due to the consumer's default or delinquency, the creditor is excused entirely from giving a notice of the changed term under paragraph (c)(2)(iv). When there is no default, but the consumer agrees to the change of collateral, the creditor, is excused from the *timing* requirements under paragraph (c)(1)(ii). For example, when a consumer agrees to the creditor's taking a security interest in order to obtain an advance above a certain limit on the account, the creditor need not give *prior* notice under this section.

Paragraph (c)(2)(v) of the present proposal excuses the notice requirement for a change resulting from an agreement involving a court proceeding. This differs from the May draft's requirement that a court *actually approve* the agreement.

Paragraph (i)(3) of the May proposal dealt with the rules that apply when an open-end credit plan is converted to closed-end credit and the rules that apply when closed-end credit is converted to open-end credit. That section has been deleted as inappropriate regulatory material. The Board intends, however, to incorporate in the commentary the positions indicated in the May proposal.

The Board believes that, whenever open-end credit is converted to closed-end credit under the terms of a written agreement signed by the consumer, the creditor shall provide the disclosures required by §§ 226.18 (b), (c), and (d). Whenever closed-end credit is converted to open-end credit under the terms of a written agreement signed by the consumer, the creditor shall provide the disclosures required by § 226.6. When either an individual open-end credit account or an entire open-end credit plan is terminated, but no written agreement converting a consumer's account to a closed-end transaction is involved, the creditor shall continue to provide periodic statements for those consumers entitled to receive them under § 226.5(b)(2) and to follow the error resolution procedures of § 226.13.

Finally, many of the commenters asked the Board to address the applicability of new terms to outstanding balances. Some also suggested preempting state law with regard to timing requirements on term change notices. The Board believes that as a general rule state or contract law should control in this area.

(d) *Finance charge imposed at time of transaction.* No substantive change has been made in this section, which corresponds to § 226.5(c) of the May proposal. In the present proposal the reference to "other than the creditor of the open end account" has been changed to "other that the card issuer" because a person who honors a credit card is also defined as a creditor for purposes of this section.

The Board solicits comment on whether the disclosures required by this paragraph are particularly meaningful, and on whether disclosure of just the amount of the finance charge being imposed at the time of the transaction would afford adequate consumer protection.

Section 226.10—Prompt crediting of payments.

This section corresponds to § 226.5(g) of the May proposal and § 226.7(g) of the current regulation. It has been substantially rewritten in order to reduce complexity by establishing easy-to-apply rules in this area.

Proposed § 227.10(a) and the accompanying footnote state the general rule that the creditor must credit a payment as of the "date of receipt," unless a delay in crediting does not result in the imposition of finance charges. For the purposes of this section, "date of receipt" is the date that payment is made at any location where the creditor conducts business, as long as the payment is received before the creditor's close of business.

Section 226.10(b) corresponds to §§ 226.5(g) (2), (3), and (4) of the May proposal. As in the current regulation, the term "promptly" is used instead of the phrase "as soon as possible." Numerous commenters regarded the "as soon as possible" standard as requiring a creditor to act immediately to credit a payment regardless of its operating procedures or the cost involved.

Proposed paragraph (b) rcognizes that a creditor may very well establish certain requirements as to the way in which payment should be made and that a creditor need not accept a payment that does not conform to specified requirements. The paragraph requires that, if the creditor does accept such a payment, however, the payment must be credited promptly. This rule replaces the current regulation's special "5-day-delay" rules (for payments accepted at locations other than those specified by the creditor for receipt of payments) with a general rule that will apply to acceptance of any nonconforming payment.

Section 226.10(c) corresponds to paragraph (g)(1) of the May proposal; no changes have been made.

Section 226.11—Treatment of credit balances.

Section 226.11, which establishes requirements for the treatment of credit balances, corresponds to § 226.5(h) of the May proposal and contains one timing change. A companion provision on the treatment of credit balances in closed-end credit has been added to Subpart C.

The proposed regulation provides that a creditor's duties arise under this section when the creditor receives a payment or "other credit" that exceeds the new balance by more than $1. "Other credit" is meant to implement the new statutory standard that any type of credit to the consumer's account in excess of the new balance must be refunded, not just excess payments as in the current regulation. The Board intends for "other credit" to encompass the examples given in the statute—rebates of unearned finance charges or insurance premiums, or any other amounts owed to or held for the benefit of the consumer.

In light of the above change, a number of commenters were concerned that five business days would be insufficient to investigate a consumer's claim for a refund of a credit balance, and then refund it. The concern expressed was that a credit balance created by a rebate, a refund, or a return might take longer for the creditor to investigate than an excess payment. To accommodate these concerns, the present proposal extends the time limit in §§ 226.11(a) (1) and (2) from five to seven business days. The separate promptness standard has been deleted from the present proposal, as the Board believes that action by the creditor within seven business days is sufficiently prompt to protect consumers.

Many commenters asked that this section permit them to withhold debits that have been incurred on the account between the time that the credit balance was reflected and the time the consumer requested a refund. In the current regulation the measuring point used to determine the existence and amount of a credit balance is the new balance reflected on the most recent periodic statement provided to the consumer. Even under the current regulation, consumers may request a refund whenever an interim payment creates a credit balance in relation to the new balance without regard to intervening debits. While there may be additional credit balances subject to the proposed regulation due to the statutory amendment, the Board is unaware of operational difficulties necessitating a change.

Other commenters questioned the extent of the requirement in paragraph (b), which corresponds to (h)(2) of the May proposal, that the creditor make a good faith effort to refund to the consumer any part of the balance remaining in the account for more than six months. This portion of the regulation closely follows the statute. The Board contemplates that a minimum tracing effort will include use of both the consumer's last known address and telephone number. A clarifying revision was made to the introductory language to make clear that a creditor is not required to trace a consumer when the amount of the credit balance remaining for six months is less than $1.

Another commenter asked the Board to address the proper procedure for the creditor to use regarding the disposition of the money if the consumer cannot be traced. This question is not addressed by the act and is, in the Board's view, a matter of state law. The fact that a consumer cannot be traced through the last known address or telephone number (and therefore no refund is mandated by this section) in no way sanctions the creditor's treating the balance as income, or otherwise disposing of it.

Section 226.12—Special credit card provisions.

This section sets forth a number of rules applicable to credit cards and credit card accounts. It corresponds to § 226.6 of the May proposal and § 226.13 of the existing regulation.

(a) *Issuance of credit cards.* This provision sets forth restrictions on the distribution of credit cards. To clarify what classes of transactions are covered, the word "agricultural" has been added to the introductory language. This change emphasizes that agricultural credit, even though it is now exempt from Regulation Z generally, continues to be covered by the rules on credit card issuance.

Paragraph (a)(1) and footnote 40 of the May proposal have been revised so as to change the rule about persons to whom credit cards may be sent. The May proposal would have permitted a card issuer to send a credit card *only* to the person requesting it. This proposal permits cards to be sent to either the cardholder or to an authorized user (upon the cardholder's request), or both, provided the authorized user does not become liable for unauthorized use of the card. This rule more closely resembles present staff position than did the May proposal and responds to commenters' concerns that the rule in the May proposal would have imposed severe operational problems for issuers and caused considerable inconvenience to consumers. The definition of "cardholder" in § 266.2, and the definition of "accepted credit card" in footnote 19, have been revised to reflect these changes. In addition, a definition of "authorized user" has been added as a part of footnote 18.

Note that the rule set forth in the proposal does not address the question of whether an authorized user, who receives a card at the cardholder's request, could be held liable on the account generally. The proposed rule provides only that no liability for *unauthorized use* may be imposed in these circumstances. Also not addressed by the proposal is the question of when one person may act as the agent of another for purposes of requesting a credit card. When a card is sent to a person upon the request of another acting as agent, the recipient becomes a cardholder. State law determines when agency exists.

A new footnote has been added as footnote 17 to paragraph (a)(1). It states existing staff interpretation that an issuer may send a credit card without having received a request for it, provided that (1) the card has some substantive purpose other than obtaining credit, (2) it is not capable of being used as a credit card when issued, and (3) credit capability will be added only upon the recipient's request. For example, a debit card could be issued that, at the time of issuance, could be used only in automated teller machines (ATMs) to make withdrawals or deposits affecting a checking account. Subsequently, upon the consumer's request, the magnetic stripe on the card could be re-encoded (or the ATM could be reprogrammed) so as to permit the consumer to obtain cash advances against a line of credit.

Paragraph (a)(2) provides that it is permissible to issue a credit card in renewal of, or in substitution for, an accepted credit card. The May proposal contained additional material stating existing staff position concening what constitutes a permissible renewal or substitution. Since this material is essentially interpretive rather than regulatory, it has been deleted. No change in substance is intended, however. As stated in the May proposal, a renewal or substitute card is permissible regardless of whether the card is issued by the same card issuer or a successor, and regardless of whether the card has credit or other features the same as or different from the accepted card. However, each accepted card may be replaced by no more than one renewal or substitute card. Further, a card is a permissible renewal or substitute for another card only if it is honored by at least one of the persons who honored the original card.

(b) *Liability of cardholder for unauthorized use.* This portion of the regulation deals with the circumstances in which liability for unauthorized use of a credit card may be imposed on a cardholder. As discussed above, footnote 18 provides that no liability for unauthorized use may be imposed on an authorized user.

Paragraph (b)(1) sets forth the dollar limitation on a consumer's potential liability for unauthorized use of a credit card. The text of this provision, as well as footnote 21, which defines "unauthorized use," are unchanged from the May proposal. A number of commenters discussed the definition of unauthorized use, and asked for guidance on what constitutes "actual, implied or apparent authority" for purposes of the definition. The Board believes that whether actual, implied or apparent authority exists for use of a credit card must be determined by reference to applicable state law. When use is determined under state law to be authorized, the regulation is silent as to the liability of cardholders and authorized users.

Paragraph (b)(2) states the preconditions of imposing liability on the consumer. They remain largely unchanged from the May proposal. However, paragraph (b)(2)(ii), which requires that the issuer disclose the consumer's potential liability, no longer requires the telephone number used for notification of loss or theft to be disclosed. The current regulation does not require the telephone number; it was added in the May proposal. It is dropped from this proposal because the Board wishes to avoid, to the extent possible, requiring form changes. In addition, the telephone number for notification is required to appear on or with the periodic statement by paragraph (b)(2)(iii) of the proposal. Finally, under proposed paragraph (b)(3) (and under the existing regulation), notice need not be given to a particular office or employee of the card issuer to be effective.

A sentence stating that the liability disclosure may include additional information not inconsistent with the liability provisions has been deleted from paragraph (b)(2)(ii). No substantive change is intended, however, since the Board believes that nothing prohibits the inclusion of additional information of this sort.

As in the May proposal, paragraph (b)(2)(iii) reflects a statutory amendment that replaces one of the existing conditions of liability. The new condition, as set forth in the proposal, it that the card issuer disclose, on or with the periodic statement immediately preceding the unauthorized use, the telephone number and address to be used for notification purposes. The Board solicited comment on whether the proposal correctly reflected the statutory amendment. Many commenters suggested that the requirement also be incorporated into paragraph (b)(2)(ii), modified, or deleted altogether. However, the Board believes that the legislative intent was to require a disclosure separate from that required by paragraph (b)(2)(ii), and that there is adequate statutory authority for the content and timing requirements as set forth in the proposal.

A technical problem was raised concerning paragraph (b)(2)(iii). It was pointed out that if, in the context of a new account, a card were lost or stolen and unauthorized use occurred before the first periodic statement was sent, the issuer would be unable to fulfill this condition of imposing liability. The Board believes that in these circumstances, the issuer would have met its burden if it fulfilled all of the other conditions stated in paragraph (b)(2).

In the May proposal, paragraph (b)(2)(iv) required that, in order to impose liability for unauthorized use, an issuer provide a means of identifying the person to whom the credit card was issued. This differs from the rule in existing Regulation Z, which requires a means of identification of the user of the card. Many commenters urged a return to the rule in the existing regulation, pointing out that the requirement in the May proposal would prohibit identification by the signature of the user, at least when the card had been issued to the cardholder and later given to a user. The reason for the rule in the May proposal was to permit a single identifier to be used by all persons who are accountholders or users on an account. For example, a combined debit/credit card could use as the identifier a PIN (i.e., a secret numerical code). However, the Board recognizes that it may be more practical for traditional credit cards to continue using the signature of an authorized user as identification. Therefore, this proposal would permit the condition to be fulfilled by providing a means of identifying either the cardholder or the authorized user, at the option of the card issuer.

Paragraph (b)(2)(iv) has also been changed by the deletion of the list of examples of means of identification. No substantive change results, since the means listed (signature, photograph, fingerprint, or electronic or mechanical confirmation) are merely examples; they would continue to satisfy this precondition of imposing liability, as would other means of identification.

Comment suggested that the regulation provide that the consumer bears no liability for unauthorized use of a credit card account when the card itself is not presented. For example, merchandise may be purchased by telephone, using a credit card account number only, by a person without authority to do so; it was urged that the cardholder should have no liability in this situation. The Board believes that to impose any liability for unauthorized use in such a situation would run afoul of the statutory intent, because the consumer's account number is widely available and the issuer has not provided a means to identify the cardholder or the authorized user. Comment is solicited, however, on the correctness of this result and on whether specific language should be inserted in the regulation to clarify the point.

Paragraph (b)(3) describes what constitutes notification to the card issuer of loss, theft, or possible unauthorized use of a card. The provision has been changed to indicate that the choice of whether to give notice in person, by telephone, or in writing may be made by whoever gives notification, not only by the cardholder.

Paragraph (b)(4) deals with liability limits imposed by state law or by agreement between the cardholder and the issuer, and is identical to the provision in the May proposal.

Paragraph (b)(5) relates to credit cards issued to businesses, and is unchanged from the May proposal except for an addition clarifying (as do the act and existing Regulation Z) that neither the card issuer nor the business may impose liability for unauthorized use on employees in excess of the Regulation Z limits.

(c) *Right of cardholder to assert claims or defenses against card issuer.* Paragraph (c)(1) sets forth the right of a cardholder to assert against the issuer any claims or defenses relating to goods or services purchased with a credit card, and states certain limitations on that right. This proposal contains various changes from the May proposal in order to improve readability.

Commenters asked for guidance on the issue of where a transaction occurs for purposes of this paragraph (for example, when goods are purchased by mail order from a merchant located in a state other than that of the consumer's designated address). The regulation remains unchanged on this point, however, because the Board believes that such determinations must be made by reference to applicable state law. The same is true with regard to the determination of what constitutes an assertable claim or defense.

Commenters also sought clarification on the relationship between the right established by this section and the right to have billing errors resolved, established by § 226.13.

Generally speaking, § 226.12 applies when a consumer has any claim or defense to payment (except tort claims) for goods or services purchased on a credit card. This would include failure to receive the goods and services, but would not typically include mistakes on the bill. Section 226.12 gives the consumer the right, in many cases, to withhold from the card issuer any portion of the balance that is still outstanding on the transaction giving rise to the claim. No particular procedures for resolution of the underlying problem are stipulated, however.

Section 226.13 sets forth procedures for resolving problems related to the bill or account statement, rather than to the goods or services charged. If a bill reflects goods or services not delivered as agreed, however, § 226.13 applies because the bill is inaccurate; that is, it reflects something that the consumer did not receive. Thus, in the case of goods or services that were not delivered as agreed, the consumer may have both a defense to payment under § 226.12 and a billing error allegation under § 226.13.

Even when both sections might apply, their provisions will operate independently. For example, to trigger the error resolution protections, a consumer must write within 60 days of the transmittal of the first periodic statement reflecting the error. The consumer may pay the full disputed amount pending resolution, however, without losing any substantive rights. In contrast, there is no time limit or specific notice requirement that a consumer needs to follow to be protected by § 226.12. A consumer could thus miss the time limit for activating the error resolution procedures, while retaining the right to assert a claim or defense to payment against the card issuer. On the other hand, once the consumer has paid the full amount of the balance on the transaction at issue, § 226.12 no longer applies. (Of course, losing rights under § 226.12 has no impact on whether the consumer has properly invoked the billing error resolution procedures of § 226.13.)

Paragraph (c)(2), dealing with exceptions to certain limitations on the right to assert claims or defenses, is virtually unchanged from the May proposal, except that a sentence, stating that honoring or indicating that a person honors a particular credit card does not qualify as any of the exceptions, has been deleted. The Board believes that the sentence added nothing to the paragraph; no substantive change is intended by its deletion.

Paragraph (c)(3), concerning the formula for determining the maximum amount assertable by a consumer, is substantially unchanged from the May proposal.

Paragraph (c)(4) is substantively unchanged from the May proposal. Lanaguage has been added to clarify that use of a check guarantee card is excluded only when no agreement exists between the card issuer and the merchant relating to honoring the card or the checks. The Board contemplates that if an agreement exists, the card issuer would have a degree of control over the relationship with the merchant; therefore, the major rationale for excluding check guarantee cards would not apply.

The Board had solicited comment on whether language should be added to expressly exclude cash advance checks that may be used in connection with a specific credit sale. (Such checks are charged directly to a line of credit, rather than to a deposit account.) After considering the comments, the Board believes that no special rule is necessary. When a cash advance check is used without a card, the section is inapplicable. When a card is used in connection with a cash advance check, the rule regarding check guarantee cards applies; if there is no agreement between the merchant and card issuer, use of the checks is excluded, whereas if there is an agreement, use of the checks is included.

The Board also solicited comment on whether other types of transactions should be exempted from paragraph (c). Many commenters urged that use of debit cards that access an overdraft line of credit be excluded. This proposal does not reflect such an exclusion. The Board has received no evidence that the parties in debit card transactions do not have or could not develop recourse agreements. Moreover, the comments failed to raise operational problems that would justify an exclusion.

Paragraph (c)(5) prohibits the issuer from making an adverse credit report if the issuer knows or has reason to know that the consumer has asserted a claim or defense. Language has been added requiring that, if the issuer learns of a claim or defense after having made an adverse credit report, the issuer notify the credit bureau and, to the extent possible, all other persons to whom the issuer made a report, that the disputed amount is not delinquent. This change would conform this provision to comparable provisions concerning adverse credit reports in the billing error resolution section.

(d) *Offsets by card issuer prohibited.* This provision prohibits card issuers from offsetting credit card indebtedness against the cardholder's funds in a deposit account held with the card issuer.

Paragraph (d)(1) outlines the basic prohibition, and specifies that it applies either before or after termination of credit privileges. However, indebtedness *incurred* after termination of a credit card plan may be offset against deposit funds.

Note that, as stated in existing staff interpretations, this provision applies to transactions not using credit cards, but taking place under plans that do involve credit cards. For example, a consumer may write a check which accesses an overdraft line of credit, but not use an associated check guarantee or debit card. The resulting indebtedness would, nevertheless, be subject to the prohibition of offsets since it is incurred through a credit card plan.

Paragraph (d)(2), as in the May proposal, states that the prohibition on offsets does not invalidate the right of card issuers to obtain or enforce security interests in cardholders' funds held on deposit, or to employ procedures that are available to creditors generally to otherwise attach or seize such funds. The provision has been modified, however, so that it is limited to consensual security interests of a specified amount. This reflects present staff position. Many commenters argued that, without this limitation, creditors could use security interests to circumvent the prohibition on offsets. While other commenters argued that consensual security interests are different from the right of offset in that the consumer must affirmatively agree to grant the security interest, it is not clear that allowing a security interest without some limitation upon the amount would give adequate notice to consumers of the creditor's rights to their funds on deposit. In addition, commenters did not cite any operational problems that would be caused by an amount limitation. This paragraph has also been changed to indicate that the prohibition on offsets does not prevent card issuers from taking funds of cardholders in deposit accounts held with the issuer, when acting under a court order. The existing § 226.13(j) has a similar provision.

The Board believes that paragraph (d)(2) permits card issuers only to take possession of funds using procedures by which other creditors could legally get possession of the same funds. For example, if another creditor, holding a security interest in funds on deposit with the card issuer, could not enforce the security interest without notice to the cardholder, then the card issuer would not be permitted to enforce its security interest in those funds without the same notice. The Board believes that this interpretation may be required by § 169 of the act. However, comment is solicited on this matter. The Board also solicits comment on whether the regulation should contain provisions relating to the conditions under which card issuers would or would not be permitted to place holds on cardholders' deposit accounts.

Paragraph (d)(3) states that the prohibition on offsets does not invalidate plans providing for regular automatic repayment of indebtedness on credit card accounts by means of deducting payments from funds held on deposit with the card issuer. This provision is unchanged from the May proposal. In order for such plans to be permitted, the cardholder and the card issuer must agree in writing on this payment method. Existing staff interpretation also makes clear that automatic deduction of charges for participation in a program of banking services (one aspect of which may be a credit card plan) may take place without violating the prohibition on offsets, even if there is no written agreement.

Paragraph (d)(4) of the May proposal, prohibiting waivers of the prohibition on offsets, has been deleted as unnecessary. Waivers of Regulation Z rights are impermissible as a general rule, in the absence of specific provisions to the contrary.

(e) *Prompt notification of returns and crediting of refunds.* This provision requires action within certain time periods by both the merchant and the card issuer when the merchant accepts the return of property, or forgives a debt for services, purchased with a credit card. It is unchanged from the May proposal except for editorial changes and the deletion of the separate promptness standard. (See discussion in § 226.11.) The comments reflected some uncertainty as to the rule for determining the date a return is accepted; the Board believes that this determination must be made under relevant state law.

(f) *Discounts, tie-in arrangements.* The title of this provision has been changed to provide a better description of its subject matter. Paragraph (f)(1) provides that card issuers may not prohibit merchants from offering discounts for payment in cash instead of by credit card. "A consumer" has been substituted for "all consumers" to make clear that prohibiting discounts for customers of a particular merchant location, for example, would be as impermissible as prohibiting discounts for all customers of a merchant. Also, the phrase "of the type described in § 226.4(f)" has been deleted. Comment pointed out that this phrase limited the scope of the prohibition to discounts of up to 5%. Current Regulation Z has no such limitation. The Board perceives no reason that merchants should not be able to offer discounts for payment in cash in any amount, provided that, when the discount exceeds 5%, the appropriate disclosures are made under Regulation Z.

Paragraph (f)(2) provides that card issuers may not require merchants, as a condition of participating in credit card plans, to maintain accounts with the issuer or obtain any other service not essential to the operation of the plan. As in the May proposal, this provision permits issuers to require the maintenance of accounts for clearing purposes, but the language in question is modified to emphasize that such accounts may be required *only* if no service charges or minimum balance requirements are imposed. Commenters argued that service charges and minimum balances should be left to regulation by the marketplace. However, the Board believes that, considering the legislative history of this provision, any exception to the general provision should be narrow.

(g) *Prohibition of surcharges.* This provision prohibits the imposition of surcharges for use of a credit card, and corresponds to existing § 226.4(i)(4). The definition of "surcharge" appears in the footnote. A sentence in the May version of the footnote, providing that payment by check, draft, or other negotiable instrument, or by electronic fund transfer, that may result in the debiting of an open-end credit card account shall not be considered payment made by use of that account, has been deleted. However, it will be incorporated into the Board's commentary to the regulation.

(h) *Relation to Electronic Fund Transfer Act and Regulation E.* As did its counterpart in the May proposal, this provision explains the relationship of the Regulation Z rules on issuance of credit cards, liability for unauthorized use of credit cards, and other credit card matters to the corresponding rules concerning access devices (for example, debit cards) in Regulation E. The provision is unchanged from the May proposal except for editorial changes.

Section 226.13—Billing error resolution.

Proposed § 226.13 addresses error resolution procedures and corresponds to § 226.7 of the May proposal and §§ 226.2(j), 226.2(cc), and 226.14 of the current regulation.

This proposal, like the May proposal, reflects a complete restructuring of the regulatory provisions. The major way in which this section has been simplified is evidenced in this restructuring; in the Board's view, this arranging of these regulatory provisions (which are based on the extremely detailed statutory provisions of sections 161 and 162 of the act) will greatly aid in understanding the statutory provisions and will facilitate compliance with them. The restructuring aims to describe the consumer's rights and the creditor's responsibilities in chronological order, with related rights and responsibilities conveniently grouped together.

Changes have been made to increase creditor flexibility in complying with the section. For example, certain location requirements have been deleted; certain time limitations have been expanded; the automatic debit provision has been streamlined; and creditors have been provided with abbreviated investigation and resolution procedures in certain instances.

(a) *Definition of billing error.* Section 226.2(j) of the current regulation defines most billing errors in terms of information appearing on or with a periodic statement. The May proposal modified this requirement to parallel Regulation E, by tying a billing error to activity in the account rather than to its reflection on a periodic statement. Several commenters stated that, prior to the time that the periodic statement is assembled, they might lack documentation adequate to conduct an investigation. As a consequence, those commenters would have to make major operational changes that could work to the detriment of consumers, whose error allegations might be prematurely investigated and dismissed based on the meager information then available to the creditor. This proposal therefore reinstates the current regulatory standard tying a billing error to a periodic statement.

The specific billing error definitions contained in §§ 226.13(a)(1) through (7) correspond to §§ 226.7(a)(1) through (7) of the May proposal.

Paragraph (a)(1) of this proposal corresponds to paragraphs (a)(1) and (2) of the May proposal. Some commenters indicated that paragraph (a)(1) of the May proposal, which defined a billing error as "an extension of credit that was not made to the consumer," was too broad in that it could be read to include credit card use by persons who were in fact authorized. Commenters also felt that paragraph (a)(2) of the May proposal, which defined a billing error as "an extension of credit that results from unauthorized use (as defined in footnote 43 to § 226.6)," might be too narrow because that footnote limited the term "unauthorized use" to credit cards. Paragraph (a)(1) of this proposal accommodates these concerns by limiting the error to *unauthorized* extensions of credit not made to the consumer, and by including the unauthorized use of open-end credit plans.

Paragraph (a)(2) of this proposal, which corresponds to paragraph (a)(3) of the May proposal, is substantively unchanged. It provides that extensions of credit not identified on a periodic statement in accordance with the identification of transaction requirements of § 226.8 are billing errors. Although creditors may use certain alternative transaction identifications on their periodic statements under § 226.8, they must afford consumer inquiries regarding the permissible alternative identifications the protections of § 226.13(e)(1).

Paragraph (a)(3) of this proposal, which corresponds to paragraph (a)(4) of the May proposal, is substantively unchanged. In part, it defines a billing error as property or services "not accepted" by the consumer. The Board believes that the issue of when goods are deemed "accepted" is governed by state law.

Furthermore, paragraph (a)(3) defines a billing error as an extension of credit for property or services not delivered to the consumer or the consumer's designee as agreed. The current regulation and the May proposal clarified with a footnote the scope of non-delivery. Although the footnote has been deleted in order to simplify the regulatory text, this provision continues to include delivery of property or services different from that agreed upon, or delivery of the wrong quantity, late delivery, or delivery to the wrong location; but, it does not include any dispute relating to the quality of property or services. The Board intends to incorporate the position of the footnote in the commentary.

Paragraph (a)(4) of this proposal, which corresponds to paragraph (a)(5) of the May proposal, is substantively unchanged.

Paragraph (a)(5) of this proposal, which corresponds to paragraph (a)(6) of the May proposal, contains one modification. The May proposal provided that a billing error included computational and other accounting errors "relating to a credit extension." This limiting phrase has been deleted to clarify that computational errors involving other entries on the consumer's account, such as payments and late payment charges, may also be billing errors.

Paragraph (a)(6) of the present proposal deals with documentation requests; it corresponds to § 226.7(a)(7) of the May proposal and § 226.2(j)(1) of the current regulation. Paragraph (a)(7) of the May proposal had been drafted in conformity with the provisions in Regulation E; the language of proposed paragraph (a)(6) now tracks that of § 161(b)(2) of the act. In light of the differences between the two statutes in the provisions regarding this type of billing error and in the statutory requirements for resolution, the Board believes that requests merely for copies of receipts, sales slips or other documents evidencing credit extensions would not trigger the error resolution procedures. Any request for "additional clarification" of a credit extension (and such a request for clarification may very well include a request for a copy of a receipt or sales slip) would, however, trigger the error resolution procedures if made within the appropriate time limits. This position, in the Board's view, represents the proper interpretation of § 161(b)(2) of the act and affirms the present staff position on the issue. In addition, to include in the regulation a detailed and complex rule designed specifically for documentation requests that in no way hint or imply that a problem is reflected on a periodic statement would run afoul of the simplification effort.

Proposed paragraph (a)(7) implements § 161(b)(6) of the amended act. This paragraph provides that the creditor's failure to transmit a periodic statement to the consumer's current address is a billing error, unless the consumer mailed notice of an address change less than 20 days before the end of the billing cycle requiring the periodic statement. This specific billing error was subsumed in the general documentation request provision of § 226.7(a)(7) of the May proposal. In order to ease operational problems in this area, the regulation provides that the creditor must be notified in writing of a change in address.

(b) *Billing error notice.* Many of the changes that have been made in paragraph (b) of this proposal, which corresponds to § 226.7(b) of the May proposal and § 226.2(cc) of the current regulation, are editorial. For instance, the phrase "billing error notice" is used instead of "notice of billing error" and other variations that appeared throughout the May proposal.

Proposed footnote 25 corresponds to § 226.7(i) of the May proposal. It relieves the creditor from continuing error resolution responsibilities if the consumer subsequently concludes that no error occurred. While editorial changes have been made in the footnote, no substantive change is intended. The Board contemplates that a consumer's withdrawal of a billing error notice may be either oral or written.

The timing requirements for a consumer to submit a billing error notice have been substantively modified. Paragraph (b)(1)(ii) of the May proposal, which permitted a consumer to use another 60-day period to assert a billing error ascertained from a documentation request, has been deleted. Paragraph (b)(1) of the present proposal simply stats, in part, that a billing error notice must be received by a creditor no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error. In the Board's opinion, to include a detailed rule in the regulation that will apply in only a few situations is contrary to the simplification effort. If, however, the consumer requests a periodic statement because the creditor failed to transmit a periodic statement (which would be a billing error under proposed paragraph (a)(7)), then the consumer, upon receipt of the periodic statement, would have another 60 days to assert a billing error discerned from that statement. The 60-day time period would, in the Board's opinion, begin from the appearance of the error on the first periodic statement that the consumer receives.

Comment on paragraph (b) of the May proposal suggested that creditors, who supply consumers with a telephone number in addition to a specific address for billing error inquiries, should be *required* to warn consumers that they must write if they wish to preserve their rights under the Fair Credit Billing Act. This suggested disclosure has not been incorporated in the regulatory text, in light of the fact that proposed § 226.5 requires that Truth in Lending disclosures be made clearly and conspicuously. However, language to that effect is contained in the model billing rights statement located in Appendix F.

(c) *Time for resolution; general procedures.* Paragraph (c) of this proposal, which corresponds to the same paragraph of the May proposal and §§ 226.14(a) (1) and (2) of the current regulation, is substantively unchanged.

Under paragraph (c)(2) of this proposal, the creditor must comply with specified error resolution precedures not later than the end of the second complete billing cycle, but in no event later than 90 days. Creditors that temporarily correct an alleged billing error during investigation must *finally* resolve within the time limits for error resolution; temporary correction does *not* satisfy the error resolution requirements.

Proposed paragraph (c)(3) relieves the creditor from conducting an investigation and determining whether a billing error occurred in certain instances. Since some creditors prefer to correct a billing error as alleged by a consumer rather than conduct an investigation, whether or not any mistake has in fact been made, this proposal clearly permits this practice. In the Board's opinion, if a creditor follows this procedure, no presumption is created that a billing error occurred.

(d) *Rules pending resolution.* Paragraph (d) of this proposal corresponds to paragraph (d) of the May proposal and portions of §§ 226.14 (a) through (e) of the current regulation.

Paragraph (d)(1) deals with a consumer's right to withhold disputed amounts and corresponds to paragraph (d)(1) of the May proposal. It provides that a consumer may withhold that portion of any required payment that is related to the disputed amount. If finance or other charges have accrued on the disputed amount, these charges are "related" and may be withheld. Similarly, the undisputed portion that the consumer remains obligated to pay may include finance or other charges that would accrue notwithstanding the alleged billing error. In attempting to reduce detail in the regulatory text, the May proposal's footnote 49, which defined the phrase "disputed amount," has been deleted. The Board continues to construe this phrase, however, to mean the amount of the transaction or charge that is subject to an alleged billing error, even though the allegation concerns the description of the transaction (such as the date or the seller's name) rather than a dollar amount.

Language in paragraph (d)(1) clarifies that the consumer's withholding of the disputed amount from the total bill cannot subject the undisputed portion to the imposition of additional finance or' other charges. For example, on an account with a 30-day free-ride period, a consumer who disputed a $2 item out of a total bill of $300 and paid $298 within the free-ride period would not lose the free-ride as to the undisputed portion, even if the creditor determined later that no billing error occurred. The Board believes that this clarification is especially important in light of the increased use of balance computation methods that include a consumer's current debits when the account is not paid in full at the end of each cycle. The Board solicits comment on any operational difficulties that may arise from this interpretation.

Proposed paragraph (d)(2) (Creditor's handling of disputed amount) corresponds to paragraph (d)(2) of the May proposal and is substantively unchanged. The creditor may mail a periodic statement reflecting a disputed amount provided that the creditor indicates on or with the periodic statement that payment of the disputed amount is not required pending resolution. In order to provide creditors with increased flexibility in designing disclosure forms, the proposal deletes the current regulatory requirement that the disclosure appear "on the face" of the periodic statement. The creditor is, however, subject to the general "clear and conspicuous" requirement of proposed § 226.5 in making this disclosure. The Board, however, affirms the present staff position that the creditor does not have to specify the actual dollar amount that the consumer need not pay pending resolution.

Proposed paragraph (d)(3) (Collection action prohibited) corresponds to paragraph (d)(3) of the May proposal and has been restructured. In this paragraph, as elsewhere in this proposal, the word "promptly" replaces the phrase "as soon as possible."

Proposed paragraph (d)(3) also contains two substantive changes. It relieves operational burdens by expanding the two-business day grace period to three business days for inadvertent collection actions. This expansion, together with the revised "business day" definition in § 226.2, should ease operational difficulties and reduce inadvertent violations in this area. The remedial action provision, which in the May proposal required a creditor to take *any* action necessary to correct an inadvertent collection action, has also been modified. In this proposal, a creditor must take any "reasonable" action to correct. The Board contemplates that "reasonable" corrective action includes, for example, refunding disputed amounts and related finance charges that were inadvertently collected; removing a lien against a consumer's property; and withdrawing any court action taken.

Proposed paragraph (d)(4) (Adverse credit reports prohibited), which corresponds to the same paragraph of the May proposal, has been restructured. It was incorrectly reflected in the May proposal that a creditor was prohibited from reporting that a disputed amount or an account was in dispute. The current regulatory language has been reinserted to limit the prohibition to reports that an amount or an account is *delinquent*. As the current regulation and the May proposal provide, the Board believes that this restriction does not prohibit a creditor from reporting that the amount or account is in dispute, or from reporting that the consumer's account is delinquent if undisputed amounts remain unpaid. While this specific language is no longer included in the regulation itself, the Board intends to incorporate this position in the commentary.

The present proposal substitutes the word "persons" for the word "creditors" in the requirement that the creditor notify the recipients of inadvertent adverse reports that the amount is not delinquent. This change is consistent with the general rule in both proposals that prohibits the creditor from making an adverse report to "any person" pending compliance with error resolution procedures. Moreover, when credit reports are made before the creditor receives a billing error notice, the creditor must notify not only credit bureaus, but also all other persons to whom the creditor reported, to the extent possible. Whereas a credit bureau is any person in the business of collecting and disseminating information relating to the creditworthiness of consumers, "persons" include employers and insurance companies, as well as other creditors.

Paragraph (d)(4) of this proposal contains several other substantive changes. In order to ease operational difficulties, the grace period for inadvertent credit reports has been expanded from two to three business days. A discrepancy in the remedial provisions has been corrected from the May proposal. Under the prior proposal, a creditor that received a billing error notice after making an adverse report was required to notify the recipients in writing, whereas a creditor that inadvertently made an adverse report within two days after receiving a billing error notice was required simply to notify the recipients; the manner of notification was not specified. The Board contemplates that the creditor must take commercially reasonable steps to ensure that the adverse credit reports are corrected. In some instances, notification may be accomplished by a letter to a person responsible for receiving the corrective information; in other cases, the same result may also be accomplished by computer communication or telephone.

Several commenters to the May proposal objected to the "as soon as possible" standard to effectuate corrective action. This proposal substitutes the word "promptly" for "as soon as possible" to clarify that a creditor that reports, for example, to a credit bureau on scheduled monthly updates need not transmit corrective information immediately by a costly unscheduled computer or magnetic tape. The creditor merely has to contact the credit bureau promptly by letter or otherwise with the correct information. The creditor is in no way responsible for ensuring that the credit bureau corrects its information immediately.

Paragraph (d)(5) (Automatic debit of disputed amounts) completely revises the requirements in § 226.7(d)(5) of the May proposal and § 226.14(c) of the current regulation. This provision governs automatic payment plans in which a cardholder authorizes a card issuer to deduct periodically an agreed-upon amount from the cardholder's account in order to pay the cardholder's indebtedness. Under the current regulation and the May proposal, the card issuer must prevent or restore an automatic debit of a disputed amount, if it receives a billing error notice within 16 days after transmitting the first periodic statement that reflects the billing error.

A few commenters to the May proposal suggested that the timing requirements in this provision are not rationally related to operational considerations involved in preventing an automatic debit. For instance, if a billing error notice arrives two hours before a scheduled automatic debit, it may be difficult for a card issuer to prevent an automatic debit from occurring.

Proposed paragraph (d)(5) requires the card issuer to prevent an automatic debit of a disputed amount and related finance or other charges, only if it receives a billing error notice up to three business days before the automatic debit date. Under the proposal, the card issuer would not have to restore a debited amount if the billing error notice arrives after the three-business-day cut-off. If, however, any part of the disputed amount is still outstanding and unresolved at the time of the next automatic debit, the card issuer would have to prevent that automatic debit.

Paragraph (d)(6) of the May proposal, which dealt with acceleration of a consumer's debt or the closing of the consumer's account, has been deleted. This provision now appears as footnote 24 at the beginning of the section.

(e) *Procedures after creditor determines that a billing error occurred as asserted.* Paragraph (e) of this proposal corresponds to paragraph (e) of the May proposal and to portions of

§§ 226.14(a)(2)(i) and (b)(2) in the current regulation. Although a number of editorial changes have been made, this provision is substantively unchanged.

As in the May proposal, a creditor that determines that a billing error occurred as alleged by a consumer must correct the error and credit the consumer's account with any disputed amount and related finance or other charges. Paragraph (e)(1) of this proposal clarifies this requirement by adding the phrase "as applicable" to denote that the corrections vary with the type of billing error that occurred. For example, a misidentified transaction that results in a billing error is cured by properly identifying the transaction and crediting finance charges. The creditor does not have to cancel the amount of the underlying obligation incurred by the consumer.

Paragraph (e)(2) of this proposal clarifies ways in which a creditor could notify the consumer of billing error corrections. The notice may be sent separately, or on or with a periodic statement that is sent within the resolution time period. If the notice of the correction appears on a periodic statement, it must specifically identify the amount as a correction rather than merely identify the amount as a credit to the account. If a *separate* billing error correction notice is provided, however, the periodic statement reflecting the corrected amount may simply identify it as "credit."

(f) *Procedures after creditor determines different billing error or no billing error occurred.* Paragraph (f) corresponds to paragraph (f) in the prior proposal and to portions of §§ 226.14(a)(2) (ii) and (iii) in the current regulation. Although a number of editorial changes have been made, this provision is substantively unchanged. Footnote 27 corresponds to the material contained in § 226.7(g) of the May proposal and portions of § 226.14(a)(2)(iii) of the current regulation.

This proposal clarifies that the creditor's explanation that the consumer's allegation is either partly or wholly incorrect may be sent separately or with a periodic statement, at the creditor's option. For the reasons discussed in paragraph (e) above, the words "as applicable" have also been added to proposed paragraph (f)(3).

(g) *Creditor's rights and duties after resolution.* This paragraph corresponds to paragraph (h) of the May proposal and portions of §§ 226.14(b)(3), (e)(1), and (e)(2) in the current regulation.

Proposed paragraph (g)(1) combines the first sentence of the same paragraph in the May proposal with the third sentence of § 226.14(b)(1) of the current regulation. The latter clarifies that the creditor may require payment of any minimum periodic payments that the consumer withheld during the error resolution period because of the billing error allegation.

Paragraph (g)(2) in this proposal, which corresponds to the last sentence in paragraph (h)(1) of the May proposal, clarifies the manner of determining the number of days a consumer has for payment after resolution. The provision requires the creditor to allow a consumer any customary free-ride period or 10 days, whichever is longer, to pay a disputed amount and related finance or other charges without incurring additional finance or other charges.

The May proposal provided that the time period would begin "after delivering the notification for the consumer to pay." The present proposal deletes this phrase, as the Board contemplates that the creditor will use the same triggering event that is normally used. For example, if the creditor uses the next periodic statement to reflect the amount due, then the date the statement is mailed, or the closing date of the previous billing cycle, would probably be the triggering event.

Proposed paragraph (g)(3) corresponds to paragraph (h)(2) of the May proposal and is substantively unchanged.

Paragraph (g)(4) of this proposal corresponds to paragraph (h)(3) of the May proposal. This provision imposes certain duties on a creditor if it receives further notice from a consumer that the consumer still disputes the amount. The present proposal returns to the current requirement in § 226.14(e)(2) that the consumer's notice be in writing.

Proposed paragraphs (g)(4) (i) and (iii) also differ from the May proposal, which had required the creditor to notify in writing recipients of adverse credit reports. The present proposal requires the creditor simply to notify these parties. These changes comport with the revisions discussed in connection with paragraph (d)(4), which prohibits adverse credit reports during the error resolution period.

(h) *Reassertions of billing error.* This paragraph corresponds to paragraph (j) of the May proposal. The present proposal returns to the current regulatory standard, which relieves the creditor of further resolution duties if the consumer reasserts "substantially the same billing error," rather than the "same error" standard that appeared in the May proposal. The present proposal also clarifies the relationship between this paragraph and paragraph (g) of this section, which imposes certain post-resolution duties on the creditor.

(i) *Forfeiture penalty.* Paragraph (i) of the present proposal, which penalizes the creditor for failure to follow the error resolution procedures set forth in this section, corresponds to paragraph (k) of the May proposal and § 226.14(f) in the current regulation. Although it is substantively unchanged, it has been edited and restructured to facilitate its use. The Board contemplates that a creditor that has forfeited the right to collect a certain amount will take no steps to collect it, not even billing the consumer for the amount. Furthermore, as in the May proposal, the present proposal requires the creditor to credit or refund any forfeited amount that the consumer has already paid, rather than withheld pending resolution.

(j) *Relation to Electronic Fund Transfer Act and regulations.* This paragraph corresponds to § 226.7(m) in the May proposal, and clarifies creditor responsibilities when an extension of credit is incident to an electronic fund transfer. References to paragraphs (e), (f), (h), and (i) of this section have been inserted to parallel a similiar provision in Regulation E. In addition to Regulation E requirements, a creditor must still comply with Regulation Z paragraphs that are not cited, which include paragraph (d) (Rules pending resolution), paragraph (g) (Creditor's rights and duties after resolution), and paragraph (i) (Forfeiture penalty).

This paragraph is designed to relieve a financial institution from complying with the conflicting requirements in Regulation Z and Regulation E. In certain instances, the Regulation E error resolution procedures are not applicable operationally to credit extensions. For example, a creditor does not have to provisionally recredit a consumer's account, under Regulation E § 205.11(c)(2)(i), in an amount equal to the unpaid extension of credit. The Board contemplates that a creditor will consider the characteristics of the credit extension portion of the electronic fund transfer, and apply the Regulation Z requirements appropriately. For example, although the Regulation E corrections provision in § 205.11(e) is not specific, a financial institution must credit the consumer's account with any finance charges incurred as a result of the alleged error.

Section 226.14—Determination of annual percentage rate.

Sections 226.14 (a) and (b) correspond to §§ 226.8 (a) and (b) of the May proposal. They have not been changed.

Section 226.8(c)(2)(ii) of the May proposal has been deleted from the current proposal. Comments in no way indicated use of the computation method of imposing a finance charge based on specified ranges or brackets of balances. As in the May proposal, comment is again solicited as to whether any creditors use this method of imposing finance charges.

Section 226.8(c) of the May proposal, now § 226.14(c), has been renumbered for clarity.

The material in § 226.8(c) (1) and (2) of the May proposal is now in § 226.14(c)(1); the material in § 226.8(c)(2)(iii) of the May proposal is now in § 226.14(c)(2). Under proposed § 226.14(c)(2)(i), the annual percentage rate is determined by dividing the total finance charge by the amount of the balance to which it is applicable. As did the May proposal, this proposal recognizes the fact that an annual percentage rate cannot be determined where a finance charge is imposed during a billing cycle in which there is no outstanding balance. (See footnote 29 and § 226.7(h) of this proposal, which provide that creditors are not required to disclose an annual percentage rate or to state that one cannot be determined.)

In the May proposal, the Board, using an initial loan fee as an example, solicited comment on situations in which a finance charge is imposed but bears no relationship to the balance on the account. The Board believes that since initial loan or application fees are collected at application, they will be reflected on the initial disclosure statement, rather than on the periodic statement; the fee, therefore, will not enter into the annual percentage rate calculation on the periodic statement.

In situations where activity, transaction, or other minimum or fixed charges are imposed, however, such charges are more likely to be nominal in amount; therefore, significant distortions in the annual percentage rate will not result.

The Board received several comments requesting that the minimum charge referred to in present regulatory § 226.5(a)(2)(iii) (§ 226.8(c)(2)(iii)(C) in the May proposal) be increased to $1. Because of the statutory language in § 127(b)(6) of the act, the limitation stated in § 226.14(c)(2)(iii) of this proposal remains at $.50.

Proposed paragraph (d) is unchanged from the May proposal.

Proposed paragraph (e) is new; it affords creditors special protection for errors that result from the good faith use of faulty calculation tools. While the Board believes that this regulatory provision will no longer be appropriate or necessary in light of the expanded defense for such errors in § 130 of the act, several commenters expressed concern about the applicability of this defense before April 1, 1982, the effective date of the new act. They requested that some form of present § 226.5(c) remain in the regulation until that time.

Section 226.15—Right of rescission.

This section, which corresponds to § 226.9 of the May proposal, has been substantially revised.

(a) *Consumer's right to rescind.* Proposed § 226.15(a)(1) sets forth the general rule allowing the consumer to rescind at certain points during the existence of an open-credit plan that is or may be secured by the consumer's principal dwelling. The present proposal returns to the statutory language that explicitly covers security interests that "will be" retained or acquired. The Board believes that this phrase may be necessary to clarify that security interests not retained when a transaction takes place may still give rise to the right of rescission. For example, materialmen's or mechanics' liens arising by operation of law may not arise until performance has begun. The right of rescission may still be applicable in such situations, even where the security interest has not yet been created.

Footnote 31 is new and represents the material in § 226.7(f)(2) of the prior proposal. The footnote provides that the right to rescind does not apply to open-end credit plans in which a state or federal agency is the creditor. The present proposal deletes paragraphs (f)(1) and (f)(3) of the prior proposal, as being inapplicable to open-end credit plans. Paragraph (f)(1) of the prior proposal exempted residential mortgage transactions. In light of the definition of open-end credit, under which a creditor must reasonably contemplate repeated transactions, and the legislative history regarding that definition, the Board believes that residential mortgage transactions would not be made on bona fide open-end credit plans. Accordingly, paragraph (f)(3) of the prior proposal, regarding the subordination of security interests that were originally exempt, has also been eliminated.

The right to rescind is available under this section to any "consumer whose ownership interest in his or her principal dwelling is subject to the security interest." "Consumer" is defined, in relevant part, as a natural person including a comaker, endorser, guarantor, surety or similar person who may be obligated to repay the extension of credit. In the Board's judgment, this definition encompasses persons who are not parties to the credit agreement but who have signed the security agreement. Therefore, a joint owner in this situation must be given the right of rescission if the property involved is that consumer's principal dwelling.

Clarifying language has also been added to the introductory sentence to indicate that it is the creditor's option whether the consumer may rescind (1) each transaction made under the plan or (2) only the plan when the plan is opened, the security interest when added or increased, or an increase in the credit limit. Footnote 32 indicates that this second option expires on March 31, 1985, and that upon expiration a consumer would have the right to rescind each individual advance under an open-end credit plan secured by the consumer's principal dwelling. In response to comments, the present proposal has been revised to indicate clearly that the rescission right only affects advances made after the expiration date, not prior obligations.

Section 226.15(a)(2) of the present proposal contains only editorial changes from the previous proposal.

Section 226.15(a)(3) of the present proposal has been rewritten to clarify that the rescission period runs from the latest of three events—the transaction or other occurrence giving rise to the right of rescission, delivery of the required notices, and delivery of the material disclosures. The rescission notice and the material disclosures need not be delivered at the same time.

All of the listed material disclosures must be given whenever an event takes place giving rise to the right of rescission. The disclosures must contain sufficient information so as to meet the content requirements for those disclosures set forth in § 226.6. The Board contemplates that a copy of the initial disclosure statement would suffice for this requirement.

Footnote 28, which lists the material disclosures for purposes of this section, has been modified to include membership fees or other fees for participation in an open-end credit plan. Reference to the minimum periodic payment disclosure has been deleted in accordance with its deletion as an initial disclosure. Other non-finance charges such as documentation fees and late payment fees are not included as material disclosures.

The second and third sentences in paragraph (a)(3), which correspond to paragraph (a)(4) of the prior proposal, describe the rule on the expiration of the right of rescission when the required notices or disclosures are not delivered. The May proposal provided that the right expires three years from the earlier of the triggering event or upon the "date of the transfer of the property." With regard to the latter, a number of commenters asked the Board to return to the current regulatory language to assure that the right of rescission would not expire merely because some portion of the consumer's legal or equitable interest was transferred. The present proposal reflects this change. The Board reaffirms the present staff position that both voluntary and involuntary transfers, including foreclosure sales, terminate the right to rescind.

The rule in the current § 226.9(f)(1) has been added as paragraph (a)(4) to clarify that transactions in which more than one consumer's ownership interest is at risk may be rescinded by any one of the consumers involved.

(b) *Notice of right to rescind.* The present proposal returns to the current regulatory requirement that the creditor give two copies of the rescission notice. Some commenters requested this change, so that the consumer would be able to use one copy to notify the creditor and retain the other for information. The proposal also clarifies that two copies of the notice must be given to each consumer entitled to rescind. Also, a new disclosure requirement, the expiration date of the rescission period, has been added as paragraph (b)(5).

The present proposal also differs from the May proposal in allowing the notice either to be separate from the material disclosures or combined with them, even where the creditor uses an initial disclosure statement to furnish the material disclosures. This position is based in part on the fact that the proposed format requirements for open-end credit disclosures are flexible enough for a creditor to combine disclosures in a manner that is conspicuous to the consumer.

Appendix F includes model rescission notices.

(c) *Delay of creditor's performance.* The first sentence is substantively unchanged from the May proposal. A number of commenters were concerned that a card issuing creditor might unwittingly violate this section if a third party honoring the card had no knowledge of the need for delay and provided materials or services to the consumer within the rescission period. This might occur, for example, when the consumer makes a purchase below the merchant's floor limit, so that the card issuer is not contacted for authorization. The present proposal relieves the creditor of liability in this situation, so long as the creditor takes no security interest in the dwelling as a result of any debts incurred by the consumer during this period.

(d) *Effects of rescission.* The present proposal is divided into two paragraphs to address the differing effects of rescission when an individual transaction is rescinded, in contrast to when the plan, the added security interest, or the credit limit increase is rescinded. The effect of rescinding an individual transaction on an open-end credit plan, as set forth in paragraph (d)(1), is comparable to the rescission of a closed-end credit transaction; that is, the security interest is void and the creditor and consumer exhange property or money so that the parties are basically returned to the positions occupied prior to the transaction. When a consumer rescinds a transaction under this paragraph, the creditor must return all amounts of money related to the credit extension including any downpayment, payments made, and appraisal or credit report fees. These examples are not listed in the present proposal; the Board intends to incorporate them in the commentary.

Paragraph (d)(1) sets up the mechanism for the exchange of property. The present proposal substitutes the term "tender" for "offer," thus returning to the statutory language, because the words may not be synonymous under state law.

This paragraph has also been revised to clarify that the consumer's option to tender at the location of the property or at the consumer's residence applies only to the tender of goods and materials. A tender of money must be made at the creditor's place of business (for example, by mailing a check to the creditor).

The paragraph uses the term "calendar days" in describing the time periods within which the creditor must return any money or property and reflect the termination of the security interest, and subsequently take back any money or property tendered by the consumer. This reflects staff interpretation of this provision.

Commenters requested that the Board allow creditors to utilize offsets, escrow agreements, and other similar alternative methods of complying with their responsibilities under this section. However, the Board believes that, in view of the act's specificity regarding the creditor's obligations, these alternatives would be inappropriate.

Many commenters also addressed the rule that requires the creditor to return any money or property given by the consumer even if it were given to third parties. In the Board's judgment, because section 125(b) of the act requires that creditors return any money or property given as earnest money, downpayment, *or otherwise,* creditors must return all monies including downpayments, prepayments, application fees, and paid to third parties. This rule reflects existing staff interpretation.

The Board would point out that these property exchange provisions do not seem relevant to those situations not involving transactions—that is, when the consumer rescinds a plan when it is opened, a security interest when added or increased to secure an existing plan, or an increase in the credit limit. When the consumer rescinds under one of these provisions, paragraph (d)(2) specifies the effects of the rescission. As with the rescission of a transaction, any amounts related to the event rescinded must be returned to the consumer. For example, if a consumer rescinds the plan when it is opened, the creditor would be obliged to return any membership or application fee paid; a consumer who rescinds an increase in the credit limit would be refunded any fee imposed for a new credit report. These examples were included in the regulation in the May proposal but have been deleted as being inappropriate regulatory material; the Board intends, however, to incorporate them into the commentary. A sentence has been added to the paragraph to emphasize the fact that a consumer's obligation to pay for an individual advance or purchase is not affected by the fact that the consumer rescinds under this paragraph, in contrast with the effect of rescinding an individual transaction. The issue would only arise in three-party situations; in two-party credit situations, the creditor must delay performance until the rescission period has expired. Of course, even as to three-party transaction, no additional security interest would attach.

(e) *Consumer's waiver of right to rescind.* This paragraph differs significantly from that of the May draft and the provisions of the existing regulation with regard to the nature of the emergency giving rise to a waiver. The consumer need only determine that the extension of credit is needed to meet a bona fide personal financial emergency. This standard essentially mirrors that in section 125(d) of the act. The Board believes that the current regulatory implementation of that statutory provision may be unnecessarily narrow and solicits comment on this revision. While the requirements for a waiver would be eased, this provision continues to prohibit the use of preprinted forms for this purpose, in order to prevent any abuse of the waiver rule.

Section 226.16—Advertising.

This section corresponds to provisions in § 226.10 of the present regulation and § 226.10 of the May proposal regarding the advertisement of open-end credit. Rules regarding advertisements for closed-end credit are found in § 226.24.

In accordance with present staff position and in light of the statutory language, the Board would point out that the advertising provisions, unlike the rest of Regulation Z, applies to creditors and non-creditors alike.

(a) *Actually available terms.* Section 226.14(a) corresponds to § 226.10(a)(1) of the May proposal and provides that an advertisement for open-end credit shall state only those terms that the creditor is actually prepared to offer. Commenters suggested retaining the "will arrange" language of the current § 226.10(a)(1)(i) in order to permit creditors to advertise terms for upcoming loan programs or specific credit offerings, as long as the terms will be generally available to consumers.

The general prohibition against inaccurate or misleading advertising in paragraph (a)(2) of the May proposal has been deleted from this proposal as unnecessary. It is believed that state statutes provide adequate protection for consumers. Commenters expressed serious concern that introducing such a broad and, arguably, imprecise standard would result in extensive, costly litigation.

(b) *Advertisement of terms that require additional disclosures.* Proposed § 226.14(b) corresponds to § 226.10(b) of the May proposal. It sets forth the so-called "trigger" terms which, when included in an advertisement for consumer credit, give rise to the requirement that certain additional disclosures also be included in the advertisement. While this paragraph is almost identical substantively to the May proposal, in response to commenters' suggestions, it has been restructured to parallel more closely the organization in the May proposal of the closed—end credit advertising section.

While commenters suggested that the language "or otherwise determinable" be deleted, the Board believes that its retention is proper and necessary. This is based on the belief that where § 226.5(b) terms may in fact be implicit from an advertisement, the advertising provisions should apply.

The annual membership fee has been specifically included in the paragraph (b) list of additional required disclosures. Such fees are becoming increasingly more popular in open-end credit plans; consequently, the Board Believes that such information is an important shopping consideration when selecting an open-end credit plan.

Comment is expressly solicited as to whether downpayents are commonly involved in the use of open-end credit plans; it is the Board's belief that such is not the case at the present time and, therefore, the Board sees no need to include it as a "trigger" term for purposes of open-end credit advertising.

Proposed paragraph (b)(2) requires that, where a trigger term is involved, disclosure is required of any periodic rate that could be applied, expressed as a corresponding annual percentage rate. In response to comments, the Board wishes to clarify that, in its view, this language contemplates disclosure of *just* the corresponding annual percentage rate. In the Board's opinion, however, this provision would not preclude an advertiser from also stating the periodic rate.

The Board wishes to point out that an advertisement must state a credit term as a positive number in order to trigger additional disclosures. For example, "no annual membership fee" would not trigger the required advertising disclosures.

(c) *Catalog and multiple-page advertisements.* Paragraph (c) of the proposal deals with catalog and multiple-page advertisements. It corresponds to § 226.10(c) of the May proposal and § 226.10(b) of the existing regulation.

The phrase "credit term" has been deleted from subsection (c)(1) of the May proposal; this paragraph's requirements are now tied to the terms contained in § 226.5(b).

Proposed paragraph (c)(2) is the same as the May proposal. It incorporates portions of present Board Interpretation § 226.1002. In the Board's opinion, the inclusion of the $1,000 limitation in the proposal is unnecessary; the requirement that the table or schedule include disclosures for the more commonly sold higher-priced property or services offered incorporates the concept in existing § 226.1002 that tables or schedules provide representative disclosures. Moreover, the Board considers unnecessary, and contrary to the simplification effort, the inclusion of language about the table or schedule disclosing the method of computing the appropriate disclosures for amounts in excess of those disclosed in the table or schedule.

Section 226.10(d) of the May proposal, regarding oral disclosures in open-end credit, has been combined with § 226.14(f), regarding oral disclosures in closed-end credit, into a new § 226.29 in Subpart E. Commenters claimed that including the oral disclosure provisions in the advertising section is confusing since oral disclosures are not included in the advertisement definition in § 226.2.

Subpart C—Closed-End Credit

Subpart C includes all provisions relating specifically to closed-end credit transactions. In addition to a number of substantive revisions, the subpart has been substantially restructured for ease of reference and greater clarity. Section 226.11 of the May proposal, which contained all rules regarding closed-end credit disclosures, has been divided into four separate sections, §§ 226.17 through 226.20. Section 226.21, relating to credit balances, is new and implements § 165 of the act. Sections 226.22, 226.23, and 226.24 reflect §§ 226.12, 226.13, and 226.14, respectively, of the May proposal.

The concept of alternate shopping disclosures, which represented the most dramatic proposal in the May draft, has been deleted from this proposal. The provision, contained in § 226.(11) of the earlier draft, would have permitted creditors to make early advertising-type disclosures as an alternative to providing regular transactional disclosures. The Board received approximately 230 comments on this provision, and the great majority, reflecting virtually all segments of the credit industry, consumer groups, and federal and state agencies, were negative. The comments as a whole reflected a belief that the proposal was unnecessary and, to the extent that it was used at all, would result in further customer confusion and creditor expense. In view of these comments, the Board is eliminating the concept of alternate shopping disclosures from the regulation. The Board remains committed to enhancing the credit-shopping function of the act by encouraging early disclosure of credit terms. However, the Board believes that this commitment can be carried out by several less dramatic means, which are reflected in the new proposal. Among the revisions which should encourage early disclosure are the more flexible rules regarding the timing of disclosures and the use of estimates.

Section 226.17—General disclosure requirements.

Section 226.17 sets forth the general disclosure requirements previously contained in § 226.11(a) through (e) of the May proposal, with substantial deletion of material which the Board believes is unnecessary. The general rules regarding the timing, form and basis of disclosures are contained in paragraphs (a), (b), and (c) of the section, which correspond to §§ 226.11(c)(1), 226.11(c)(3), and 226.11(d), respectively, of the earlier proposal.

(a) *Time of disclosures.* The revisions in this paragraph, formerly § 226.11(c)(1) of the May proposal, are primarily editorial. The first sentence continues to reflect the current regulatory requirement that disclosures be provided before consummation of the transaction. However, as noted in the discussion of § 226.2 above, the definition of consummation has been substantially revised. Consummation will be the time at which the consumer becomes contractually liable on the obligation, as determined by applicable law. The payment of a nonrefundable fee prior to that time does not serve to trigger consummation, contrary to the position taken in the May proposal and in current staff interpretations of the regulation.

Paragraph (b), formerly designated as §§ 226.11(c)(3) and 226.11(c)(4) in the May draft, has been significantly expanded and reorganized for increased clarity. Paragraph (b)(1) retains the requirement in the May draft and section 128 of the act that, as a general rule, all of the disclosures required by § 226.18 (Content of disclosures) must be grouped together and segregated from all other information not directly related to the disclosures. The term "directly related," as used in this standard, is construed very narrowly in order to carry out the congressional purpose in requiring segregation of Truth in Lending disclosures. Any information beyond that specifically called for by § 226.18, even information which provides further elaboration of required disclosures, would not be directly related to the disclosures and could not normally appear with them. This would include such information as a description of the type of security interest taken in a transaction or the conditions under which a prepayment penalty would be imposed.

Paragraph (b)(1) and accompanying footnotes contain special rules and exceptions to the general requirement of segregation of required disclosures. The last sentence of the paragraph *requires* that explanation of the amount financed under § 226.18(c) always appear separate from the segregated disclosures. The footnote *permits* three disclosures required by § 226.18 to appear apart from the segregated disclosures. These disclosures are the creditor's identity under § 226.18(a), credit life or property insurance premiums under § 226.18(n), and certain charges related to a security interest which are excludable from the finance charge under § 226.18(o). Any of these disclosures may appear with the segregated disclosures, together or separately on other documents, or combined with the disclosure of the amount financed explanation. The first footnote to paragraph (b)(1) specifically permits the inclusion of three additional items of information with the segregated disclosures: an acknowledgement of receipt, the consumer's name, and the consumer's account number. Other than these three specific items of information, the segregated federal disclosures required by § 226.18 may *not* include any other information.

Paragraph (b)(2), regarding use of the terms "finance charge" and "annual percentage rate," is substantially similar to § 226.11(c)(4) in the May proposal, with minor editorial revisions to reflect suggestions made by several commenters.

(c) *Basis of disclosures and use of estimates.* Section 226.17(c), based on § 226.11(d) of the May draft, is designed to provide guidance to creditors in making disclosures, particularly when the necessary information may not be known with any certainty at the time disclosures are made. This paragraph reflects a number of editorial changes, as well as several substantive revisions.

The most important change is contained in paragraph (c)(1). This paragraph is similar to the May proposal in requiring that disclosures reflect the best information available at the time of disclosure. But the disclosures must now be based on the *enforceable* obligation between the parties. The May draft reflects the current regulatory position that disclosures should be based on the actual agreement between the parties, even though that agreement may be contrary to the terms of the parties' legally-enforceable obligation. For example, the Board's staff has stated that Truth in Lending disclosures must be based on a voluntary payroll deduction plan or an informal principal reduction agreement, regardless of the fact that those agreements do not represent the enforceable obligation between the parties. This interpretation may not be compatible with the thrust of the Truth in Lending Act as amended, which is to provide customers with an accurate picture of the obligation to which they will be legally bound. In addition, the current standard has proven difficult in application and frequently complicates both the compliance and enforcement burdens. In light of these considerations, the Board now proposes to require that disclosures be based only on the enforceable obligation between the parties, and specifically solicits comment on this provision.

Paragraph (c)(2) is virtually identical to § 226.11(d)(2) in the May proposal except that the word "clearly" is deleted from the paragraph. Since all disclosures must be made clearly and conspicuously, the repetition of the standard in this paragraph is unnecessary. As under the current regulation, estimates must be designated as such in the segregated disclosures. However, no further explanation of the basis for the estimates may be included with those disclosures, although such explanation may appear as additional information apart from the disclosures.

Paragraph (c)(3), permitting certain factors to be disregarded in calculating the required disclosures, contains only one substantive change. Paragraph (c)(3)(ii) now permits creditors to disregard the fact that payment dates fall on a "day which is not a business day," rather than on a "Saturday, Sunday, or holiday." This change has been made in response to a number of comments pointing out that many creditors' business days do not coincide with regular weekdays. "Business day" is defined in § 226.2 of the proposal as those days on which the creditor is open to the public for substantially all of its normal business functions. This definition, which coincides with that contained in Regulation E, implementing the Electronic Fund Transfer Act, allows the creditor to define its business day according to its own practice.

Paragraph (c)(4), regarding certain payment schedule variations, contains editorial revisions which are not intended to change the substance of the paragraph. The introductory language has been revised, and the definitions contained in § 226.11(d)(4)(ii) of the May proposal have been incorporated into footnotes to the paragraph.

Section 121(d) of the act authorizes the Board to establish tolerances for numerical disclosures other than the annual percentage rate and, as discussed above in § 226.4(a), the Board is proposing a tolerance for disclosures of the finance charge. At this time, the Board is not considering similar tolerances for other numerical disclosures such as the amount financed, in the absence of any evidence indicating a need for such a tolerance. However, the Board solicits comment on whether such tolerances would be appropriate, as well as on the terms for which a tolerance is necessary and the degree of tolerance which should be provided.

Paragraph (c)(5), dealing with demand obligations, is similar to § 226.11(d)(5) in the May draft, but the Board wishes to solicit comment on two issues not previously addressed will regard to this provision. First this paragraph reflects the concept of enforceability as the basis for disclosures, as noted in discussion of paragraph (c)(1). Disclosures for demand obligations should be based on an alternate maturity date, rather than an assumed maturity of one year, only in those cases in which the alternate maturity is reflected in an enforceable agreement between the parties. This is contrary to interpretations of the current regulation. Presently, an alternate maturity date may be inferred from an informal principal reduction agreeemnt or a similar understanding between the parties, and disclosures must be based on that alternate maturity. Under the revised paragraph, the obligation in such cases will be viewed as purely a demand obligation, unless the parties have agreed to a legally enforceable repayment schedule setting an alternate maturity date. The Board specifically requests comment on this proposal.

The alternate maturity provision of this paragraph raises a second issue which is related to a current Board interpretation. In addition to demand obligations which have a concurrent alternate maturity provision, certain obligations may call for a conversion to a demand status after a stated period. One example of this type of obligation is addressed in current Board Interpretation § 226.816. The Board proposes to eliminate that interpretation, which appears to have very limited applicability. In the Board's view, the fact that the demand feature is not immediately available to the creditor does not prevent these transactions from being considered demand obligations and the Board proposes to treat them as such under the new proposal. Thus, they would be subject to the general rule in paragraph (c)(5) and disclosures for these transactions would be based upon any enforceable alternate stated maturity. However, the Board specifically solicits comment on alternative ways of dealing with these obligations, as well as on their prevalence.

Paragraph (c)(6) is based on § 226.11(d)(6) of the May proposal but has been substantially revised. New paragraph (c)(6)(i) incorporates in its entirety the first sentence of paragraph (d)(6) of the May draft. The second sentence of that earlier proposal has been deleted. The Board believes that the separate financing of a downpayment in a credit sale transaction may be disclosed as two transactions pursuant to the general rule in that paragraph and that a specific rule for such transactions is unnecessary.

The purpose of paragraph (c)(6)(i) is to prevent creditors from artificially separating what is essentially one transaction into two or, on the other hand, consolidating two separate transactions into a single one, in order to distort and obscure the credit terms to which the consumer is agreeing. The Board is aware that the issue addressed by this rule has been the subject of numerous questions and several judicial decisions. In the Board's view, however, precise rules for determining what constitutes a single transaction are neither desirable nor possible, particularly in view of the enormous variety in credit transactions. Creditors should retain some flexibility in structuring transactions in order to meet the needs of their customers as well as their own operational requirements. Paragraph (c)(6)(i) is intended to reflect that position.

Paragraph (c)(6)(ii), relating to multiple advances under an agreement to extend credit up to a certain amount, is based on § 226.11(m) of the May draft. It would reverse the position taken in that draft and in the current regulation (§ 226.8(i)) by permitting a creditor either to treat all of the advances as a single transaction or to disclose each advance as a separate transaction. The Board believes that both approaches can provide meaningful disclosures to consumers and that mandating one method or the other is unnecessary. If these transactions are treated as one transaction and the timing or amount of advances is unknown, creditors must make disclosures based on estimates, as provided in proposed § 226.17(c)(2).

Paragraph (c)(6)(iii) provides a similarly flexible rule for disclosure of construction loans that may be permanently financed. These transactions have two distinct phases, similar to two separate transactions. The construction period usually involves several disbursements of funds at times and in amounts that are unknown at the beginning of that period and the consumer generally pays only accrued interest until construction is completed. Unless the obligation is paid at that time, the loan then converts to permanent financing in which the loan amount is amortized just as in a standard mortgage transaction. This special rule would permit the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for the two phases. It would be available whether the consumer was initially obligated to accept construction financing only or both construction and permanent financing. If the consumer is obligated on both phases and the creditor chooses to give two sets of disclosures, both sets must be given to the consumer initially, because both transactions would be consummated at that time.

Many commenters requested that the substance of present Board Interpretation § 226.813 be incorporated into the revised regulation because it provides guidance on making disclosures and calculations for multiple-advance construction loans. That interpretation has been revised and now appears as Appendix D to this proposed regulation. Its use is limited to multiple-advance loans for construction of a dwelling.

(d) *Multiple creditors; multiple consumers.* This paragraph reflects § 226.11(a) (1) and (2) of the May proposal but eliminates the general statements that a creditor must provide disclosures to a consumer. The Board believes that this material is unnecessary and has revised the paragraph to address only multiple-consumer and multiple-creditor transactions, where specific guidance may still be needed.

The first sentence has been redrafted to reflect the Board's concern that a consumer receive a complete document incorporating all of the credit terms that must be disclosed for that transaction. In a transaction involving multiple creditors, creditors should retain some flexibility in the way in which that set of disclosures is provided. For example, the creditors may agree to designate one creditor to assume that responsibility or the creditors may join in designing a single set of disclosures.

The change in the paragraph is not intended to absolve any creditor in such transactions from liability for failure to make disclosures. Regardless of the arrangements made between creditors, each creditor in the transaction is legally responsible for providing the disclosures and any one of them may be subject to liability for violations. However, fewer questions are likely to arise regarding multiple-creditor transactions because the revised definition of "creditor" will substantially reduce the number of transactions in which more than one party will be considered a creditor.

The second sentence in paragraph (d) carries forward the position taken in the current regulation and in the May draft, which require the creditor to make disclosures to a consumer who is primarily liable on the transaction.

(e) *Effect of subsequent events.* Paragraph (e)(1), relating to changes that occur after the delivery of disclosures, remains substantially similar to its counterpart in the May draft with only a minor editorial revision.

Paragraph (e)(2) differs significantly from its counterpart in the May draft. Under this paragraph, creditors need not provide new disclosures when the previously disclosed credit terms are rendered inaccurate before consummation. In the Board's view, this revision will help effectuate the credit-shopping goals of the act by promoting early disclosures. The requirement in the current regulation that creditors provide new disclosures when a term changes before consummation may have discouraged creditors from making any effort to disclose until the point of consummation. As in the current regulation, creditors may use estimates as provided in paragraph (d)(2). The requirement that estimates be based on the best information reasonably available should prevent creditors from making disclosures so early that reasonable accuracy is impossible. The Board solicits comment on whether this new proposal would permit any abuses and whether the "good faith" standard is sufficient to avoid any abuses.

Paragraph (e)(3), regarding changes after consummation, is substantially similar to § 226.11(e)(4) in the May draft with only minor editorial changes that do not alter the substance of the provision.

Section 226.11(e)(3) of the May draft has been eliminated entirely, since it addressed only alternate shopping disclosures.

(f) *Mail or telephone orders—delay in disclosures.* This provision, previously § 226.11(k) of the May proposal, has been slightly revised. Since some commenters questioned the meaning of "personal solicitation," that phrase has been replaced with the phrase "face to face or direct telephone solicitation." This change is meant to clarify that the provision is available when creditors use letters to solicit requests for credit. The solicitation referred to in this section is that done by the creditor itself or someone acting on the creditor's behalf.

A few commenters questioned how the listed information should be made available. The regulation does not specify how that is to be done, since that is a matter to be determined by the creditor. The reference to the "public generally" has been changed to "the public" to avoid the implication that the information must be made available to the world at large in order for the provision to apply.

The list of required information in paragraph (f)(1) has been reduced to more closely follow the statutory provision section 128(c)) and to parallel the revised advertising provisions. The references to downpayments and total of payments have been eliminated and "the number, amounts, and timing of payments" has been replaced by "the terms of repayment." The explanation of what is required by this term is set forth more fully in the material accompanying proposed § 226.24(c), below. The information need be given only as applicable.

Some commenters pointed out the difficulty faced by creditors when credit insurance is written in connection with mail and phone orders, since the May proposal would have required the insurance authorization to appear with the other disclosures. Since the location requirements for the insurance disclosures have been revised to permit them to appear apart from the other disclosures, a creditor could mail an insurance authorization to the consumer and then prepare the other disclosures to reflect whether or not the authorization is completed by the consumer. Disclosing the insurance cost on a unit-cost basis further simplifies the disclosures.

(g) *Series of sales—delay in disclosures.* This paragraph was previously § 226.11(1) of the May draft. The revisions in the first paragraph are primarily editorial. Language has been added to clarify that the delay provision applies to the disclosures pertaining to the current sale. Paragraph (1)(2) from the May proposal has been deleted in light of the revised standard for what constitutes a refinancing under § 226.20(a). If the conditions listed in the first paragraph are not met, the transaction may be a refinancing; alternatively, disclosures for the current sale would be given before consummation of that sale.

Section 226.18—Content of disclosures.

Section 226.18 sets forth the disclosures required in a closed-end transaction. Although it is based closely on § 226.11(f) of the May draft, it has been the subject of a number of editorial and several substantive revisions.

The introductory paragraph deletes the second sentence from the May draft, requiring creditors to include a brief identification and the amount of each disclosure where applicable. These requirements are already mandated by both the substantive provisions of the paragraph and the general "clear and conspicuous" requirement proposed in § 226.17(b).

The disclosures required by this section need by made only as applicable, meaning that any disclosure not relevant to a particular transaction may be eliminated entirely. For example, in a loan transaction, the creditor may delete any disclosure of the total sale price. Similarly, even in a credit sale requiring disclosure of the total sale price under paragraph (j), the creditor may delete any reference to a downpayment where no downpayment is involved.

Where the amounts of several numerical disclosures are the same, the "as applicable" language would also permit creditors to combine the terms, so long as it is done in a clear and conspicuous manner. For example, if in a particular transaction the amount financed equals the total of payments, the creditor may disclose "amount financed/total of payments," together with descriptive language, followed by a single amount. However, if the terms are separated on the disclosure statement and separate space is provided for each amount, both disclosures must be completed, even though the same amount is entered in each space.

Paragraph (f)(17) of the May draft has been deleted and the substance of that provision incorporated as footnotes in § 226.18. The footnote to the introductory portion of the section restates the special rules for interim student loans previously in § 226.11(f)(17)(i). The footnote also includes a definition of interim student loans, which have not previously been defined in the regulation. The Board specifically solicits comment on this definition. Sections 226.11(f)(17)(ii) and (iii) are now reflected as footnotes to paragraphs (e) and (h), respectively.

For ease of reference, each of the 17 paragraphs in § 226.18 has been provided with its own caption, briefly identifying the credit term addressed in that paragraph.

As in the May draft, five of the disclosures required by the section must be further explained to the consumer in a manner similar to the descriptive phrases shown in the regulation. Although the new proposal changes the language "accompanied by" to "and," the Board wishes to emphasize that this change is merely editorial. Creditors may not separate the required term and its descriptive phrase in such a manner as to obscure their relationship to each other.

(a) *Creditor.* This paragraph is unchanged from § 226.11(f)(1) of the May draft. Use of the creditor's name would, in the Board's view, be sufficient to comply with this requirement, but the creditor may at its option include an address or telephone number.

(b) *Amount financed.* Paragraph (f)(2) of the May draft, regarding the amount financed, has been divided into paragraphs (b) and (c) of the current proposal, for greater clarity. New paragraph (b) requires disclosure of the amount financed and states the method of calculating that amount, while new paragraph (c) sets forth the rules regarding the explanation of the amount financed.

Paragraph (b) (1) through (3) corresponds to paragraph (f)(2)(i) (A) through (C) of the May proposal. Both the terminology and the calculation steps are unchanged, but the provision has been redrafted to clarify several questions raised by commenters on the May draft.

A number of commenters questioned the Board's use of the term "principal amount of the loan" as the starting point for amount financed calculations in loan transactions. They pointed out that "principal" may include finance charges such as precomputed interest which is added to the face amount of the obligation. Since such amounts normally would not be considered prepaid finance charges and thus would not be deducted from the loan amount under the regulation, the calculated amount financed might impermissibly include a portion of the finance charge. Paragraph (b)(1) has been redrafted to clarify that for purposes of calculating the amount financed, the loan principal cannot include any finance charges.

The second portion of paragraph (b)(1), relating to credit sales, has also been revised. The reference to a trade-in has been deleted as unnecessary, since "downpayment" is now defined in § 226.2 to include the value of any trade-in.

Paragraph (b)(2) reflects in an abbreviated form the substance of § 226.11(f)(2)(i)(B) of the May draft. It refers primarily to those charges which under the current regulation would be characterized as "other charges" under § 226.8 (c) and (d). These would normally include any fees which are not part of the finance charge to the extent that the customer decides to finance them rather than paying them separately at consummation of the transaction. As before, this paragraph would not encompass any charges which are part of the finance charge nor may it include any amounts already accounted for under paragraph (b)(1).

Paragraph (b)(3) requires the deduction of any prepaid finance charges from the amount financed. The parenthetical material in § 226.11(f)(2)(i)(C) of the May draft has been deleted, because "prepaid finance charge" is now defined in § 226.2 of the current proposal, for ease of reference. The basic definition of the prepaid finance charge and its role in calculation of the amount financed remain unchanged.

(c) *Explanation of amount financed.* This paragraph requires a written explanation of the amount financed, at the customer's request, and reflects § 226.11(f)(2)(ii) of the May draft. The Board believes that the term "explanation" is more appropriate than "itemization," which was used in the May proposal. No substantive change is intended.

The current proposal differs significantly from the earlier draft in four respects. First, the paragraph has been rewritten to permit creditors to provide a written explanation of the amount financed without a request from the customer. Only if the creditor does not provide an explanation as a matter of course must the creditor give the customer a statement of the customer's right to receive such explanation. This is a significant departure from the May draft, which required that the creditor inform the customer in writing of the customer's right to receive the explanation and await the customer's request before providing that information. In the Board's view, the legislative history of the act indicates that Congress intended creditors to have either alternative available to them in complying with this provision.

Second, §§ 226.11(f)(2)(ii) (B) and (C) of the May draft, relating to the timing and location of this disclosure, have been deleted. These questions are now addressed in § 226.17 of the new proposal. As in the May draft, the explanation must appear separately from the remainder of the disclosures, but it must now be provided at the same time as the other disclosures.

Third, the list of items that must be disclosed as part of the explanation has been reduced by deletion of the cash price, cash downpayment and trade-in. While these amounts may be of some assistance in providing a mathematical progression for the explanation, their inclusion is not mandated by the statute.

Fourth, paragraph (c)(1)(iv), reflecting a portion of § 226.11(f)(2)(ii)(A) of the May draft, makes clear that the creditor must identify third persons receiving amounts on the consumer's behalf. The second sentence of that paragraph provides a special exception in the case of amounts forwarded to public officials or governmental agencies. These amounts typically include such items as notary fees, fees paid to a department of motor vehicles for licenses and fees paid to public officials for filing or releasing a security interest. Creditors need not list each individual official or agency receiving these amounts, but may consolidate them under a single heading such as "government officials" or "government agencies."

To assist creditors in complying with this provision, the Board has included in Appendix G a model form for explanation of the amount financed. While the Board believes that creditors should be given a considerable amount of flexibility in complying with this requirement, some precision in this aspect of the regulation is necessary and appropriate, both to provide further guidance to creditors and to prevent unnecessary confusion to consumers. Therefore, the Board proposes to apply several specific guidelines to completion of these forms and requests comment on them. First, the categories shown in the list must be mutually exclusive. For example, any amounts included in the prepaid finance charge should not be reflected in amounts paid to third parties. A credit report fee is often paid to third parties and in a nonrealty transaction is part of the finance charge. If this amount is paid at consummation of the transaction, it consitutes a prepaid finance charge that must be included in the total disclosed under paragraph (c)(1)(i) and not reflected in the list of amounts shown under paragraph (c)(1)(iv).

Second, the model form does not require the amounts to be shown in any mathematical order or progression. In the Board's view, the categories required by the act do not, without the addition of further categories, lend themselves to an arrangement in a mathematical progression in most cases. In the interest of simplification, the Board does not believe that the inclusion of further disclosures or instructions in order to arrange the terms in an arithmetic manner would be appropriate. Third, as noted above, the Board has created one category of third party fees which need not be specifically identified beyond "payment to public officials" or similar language. This category is reflected on the model form and the Board solicits comments on any other categories which may be appropriate.

The Board also wishes to draw attention to § G(4) of Appendix G, which provides a special model form for transactions subject to the Real Estate Settlement Procedures Act (RESPA). That act requires creditors to provide a good faith estimate of closing costs which is in many respects similar to the amount financed explanation required by paragraph (c). The legislative history of the Truth in Lending revisions indicates that Congress intended to allow creditors subject to RESPA to combine these two requirements, and § G(4) provides a special model form for this purpose. The Board solicits comment on its utility and particularly welcomes suggestions on ways to make the form more useful to creditors subject to both acts. The Board also solicits comment on whether the RESPA good faith estimates alone may be sufficient, without further change, and whether creditors subject to RESPA should therefore be exempt from paragraph (c) entirely.

(d) *Finance charge.* This paragraph corresponds to § 226.11(f)(3) of the May draft, and requires disclosure of the finance charge. However, unlike its earlier counterpart, it no longer requires creditors to use the precise descriptive phrase contained in that paragraph.

(e) *Annual percentage rate.* Unlike § 226.11(f)(4), its counterpart in the May proposal, this paragraph does not require creditors to use the exact descriptive phrase contained in the provision in describing the term.

(f) *Variable rate.* This paragraph corresponds to § 226.11(f)(5) of the May proposal and requires disclosure of a variable rate provision in a credit transaction. Although the earlier draft eliminated the current requirement for disclosure of hypothetical increases in the rate, the Board now proposes to reinstate that requirement for residential mortgage transactions. For two reasons, the Board believes that information regarding the effects of an increase in the interest rate, at least on the payment schedule, may be warranted in these transactions. First, these transactions typically involve unusually large amounts of money and thus represent the most important credit transaction entered into by a consumer. Second, variable rate provisions are becoming increasingly common in such transactions. Therefore, the Board proposes to require creditors in residential mortgage transactions to provide consumers with an example of the payment terms which could result from an increase under a variable rate provision.

No specific numerical basis for the hypothetical is required, unlike the ¼ of 1% basis required by the present regulation. In view of the enormous variety in variable rate provisions, the Board does not believe that any specific requirement in the regulation will necessarily reflect the best example for a particular creditor's plan. Therefore, the Board proposes to allow creditors to design the hypothetical disclosures, based on the terms of the individual plan. Comment is solicited on this matter.

This proposal eliminates two footnotes to the variable rate disclosure requirement, which are contained in the May proposal. These footnotes relate to the types of rate increase subject to the disclosure requirement and the types of limitation on increases not intended to be subject to this provision. In the Board's view, the material contained in those footnotes is merely intended to elaborate on the regulatory language and is more appropriate for the commentary. As stated in those footnotes, the limitations referred to in paragraph (f)(2) do not include any limits imposed by law, such as state or federal statutes or regulations, nor does paragrah (f) apply to increases resulting from delinquency (including late payment), default, assumption or transfer of the collateral.

This paragraph is also intended to address the substance of FC–0172, a recent official staff interpretation regarding renegotiable rate mortgages. That interpretation, effective September 23, 1980, permits creditors to disclose such transactions as either variable rate transactions or ballon payment mortgages, since they share the characteristics of both of those types of transactions. As emphasized in that interpretation, this alternative treatment is intended to be a temporary measure until the question can be resolved under the revised regulation. The Board now proposes to treat these mortgages as variable rate transactions subject to the disclosure requirements of § 226.18(f), in the belief that they more closely resemble true variable rate transactions. Thus, as of March 31, 1982, when the interpretation expires, the disclosures required by this paragraph, as ultimately adopted by the Board, must be made in conjunction with these transactions.

(g) *Payment schedule.* This paragraph, which requires disclosure of the payment schedule, is unchanged from § 226.11(f)(6), its counterpart in the May proposal, but the Board wishes to address several issues raised by the comments on this provision.

First, as indicated in the May proposal, "timing" has the same meaning as the language "due dates or periods" used in the current regulation. As in the May draft, the requirement in the current regulation for labelling an unusually large payment as a "balloon payment" has been eliminated.

Second, a number of comments on the footnote to this paragraph reflected some misunderstanding of the application of the footnote. As an alternative to showing each payment, the footnote allows an abbreviated disclosure of payment schedules involving varying payment amounts. If the amount of one payment in a group of payments is not more than five percent greater than the smallest payment in that series, the creditor may disclose the largest payment, together with the number of payments at that amount, labelling the disclosure as an estimate. This provision may be used for any series of payments within the payment schedule, even where the entire payment schedule contains a variation of more than five percent from the highest to the lowest payment. For example, where the first payment is 12 percent larger than the last payment, the creditor may divide the total payment schedule into three series and base its payment disclosure on the largest payment amount in each of those three series. In addition, the payment schedule variations need not be based on any particular progression. While the example used contemplates a consistent progression from a high first payment to a low final payment, this special provision may be used for different types of variations, including recurring increases and decreases.

The five percent tolerance used in the footnote appears to be adequate to encompass the most common variable payment transaction, based on the information currently available. However, the Board would consider a slightly larger tolerance if further comments indicate that a small increase in this standard would enable many more transactions to take advantage of this rule. Specific comment regarding this issue is solicited.

Third, a number of commenters asked whether the payment schedule might include amounts beyond the amount financed and finance charge. Official staff interpretation FC–0157 permits certain insurance premiums to be included in the payment schedule disclosure, even though the premiums are not part of either the amount financed or the finance charge in the transaction. Real estate escrow amounts, such as taxes added to the payment in mortgage transactions, represent another type of charge which is not part of the amount financed or the finance charge. The Board proposes to define the "payments" referred to in paragraph (g) as those which reflect only the amount financed and finance charge for the transaction, which would exclude those escrow amounts and charges of the type described in FC–0157.

Fourth, several commenters inquired about the continued applicability of official staff interpretation FC–0123 under the proposed regulation. That interpretation makes clear that prepaid finance charges, such as interim interest collected at consummation of the transaction, are not considered "payments" within the meaning of paragraph (g) and should not be reflected in the payment schedule. That interpretation remains valid, but the Board does not believe any revision to the regulation itself is necessary to specifically incorporate that position.

Fifth, a number of commenters requested clarification of the status of Board Interpretation § 226.808 under the proposed regulation. That interpretation permits creditors to make an abbreviated payment schedule disclosure where the application of a rate to a declining balance creates irregular payment amounts. That interpretation would be eliminated but many transactions currently taking advantage of it will be able to use the special rule provided in the footnote to paragraph (g) as an alternative.

(h) *Total of payments.* This paragraph, requiring disclosure of the total of payments, contains one substantive and two editorial changes from § 226.11(f)(7) of the May proposal. First, creditors may base the total of payments on the exact payment schedule, even though they utilized the five percent tolerance in disclosing the payment schedule.

Second, the suggested descriptive language has been changed, in response to many comments regarding the tense used in the phrase.

Third, a footnote incorporates the substance of § 226.11(f)(17)(iii) of the May draft, permitting creditors to omit disclosure of the total of payments in single-payment transactions. This exception would not apply to a transaction calling for a single payment of principal combined with periodic payments of interest.

(i) *Demand feature.* This paragraph, which requires special disclosures for demand obligations, amends the language of § 226.11(f)(8) of the May draft from "obligation is payable on demand" to "obligation has a demand feature." This change is intended to clarify that the disclosure requirements of this paragraph would apply to transactions which are not payable on demand at the time of consummation but convert to a demand status after a stated period. The transaction described in Board Interpretation § 226.816 is an example of one such transaction. As discussed in § 226.17(c)(5), the transactions addressed in that interpretation would be considered demand obligations subject to paragraph (i).

The type of demand feature triggering the disclosures required by this paragraph is intended to include only those demand features contemplated by the parties as part of the agreement. For example, this provision would not apply to transactions which convert to a demand status as a result of the customer's default.

Board Interpretation § 226.815 provides a special rule for disclosure of the payment schedule and other terms in a demand obligation. This interpretation will not be incorporated into the revised regulation. Demand obligations will be subject to the same disclosure requirements as other transactions, including requirements for disclosure of the payment schedule. Thus, if a demand loan calls for periodic interest payments, the number, amounts and timing of those payments must be disclosed under paragraph (g). In the Board's view, since other demand loan disclosures (in the absence of an alternate maturity) are based on an assumed one-year maturity, the payment schedule disclosure should also be based on the same term. However, comment is solicited on this issue.

A model clause for disclosure of a demand feature is provided in § G(7) of Appendix G. The Board solicits comments on any alternative language that might be provided for this model, particularly in view of the revisions to this paragraph.

(j) *Total sale price.* This paragraph, which requires disclosure of the total sale price in a credit sale transaction, is substantially similar to § 226.11(f)(9) of the May proposal. The reference to downpayment in the descriptive language accompanying that term prompted many questions from commenters regarding the continued availability of Interpretation § 226.504, dealing with deferred downpayments. As discussed in § 26.2, a new definition of downpayment has been added to the regulation to address these questions.

Since all the disclosures required by § 226.18 need be made only "as applicable," creditors may revise the descriptive language for this paragraph to eliminate any reference to a downpayment, in transactions calling for no downpayment. For example, the descriptive explanation may state "the total price of your purchase on credit."

(k) *Prepayment.* This paragraph requires that the consumer be told whether or not a penalty will be imposed or a rebate given in the event of prepayment of the obligation in full. It has been substantially revised from both § 226.11(f)(10) of the May proposal and § 226.8(b) of the current regulation.

Paragraph (k)(1) corresponds generally to § 226.11(f)(10)(ii) of the May proposal and applies to simple interest obligations. Paragraph (k)(2) reflects § 226.11(10)(i) of the May draft and covers transactions involving precomputed finance charges. These two paragraphs, like §§ 226.8(b)(6) and 226.8(b)(7) of the present regulation, are intended to distinguish two separate types of transactions according to the nature of the finance charges imposed. The Board recognizes that this distinction has been the source of confusion, compounded by the fact that a single transaction may actually include both types of charges.

The current proposal represents an effort to provide further guidance on the distinctions between these types of transactions. Paragraph (k)(1) defines simple interest obligations very narrowly to include only those transactions in which the interest calculation takes account of each reduction in principal. Paragraph (k)(2) encompasses any finance charges which do not meet the requirements of paragraph (k)(1) and in that sense is a much more inclusive category. The Board recognizes that such an approach may exclude from the first paragraph certain types of charges, such as mortgage insurance premiums, which may be calculated on the basis of a declining principal balance but do not take into account each principal reduction. In the Board's view, while alternative approaches may also have merit, a precise and easily-applied rule is necessary to alleviate confusion regarding these disclosures. The Board specifically solicits comment on this approach.

In addition to the change described above, paragraph (k) has been revised in several other respects. Paragraph (k)(1) now states "whether or not a penalty may be imposed," rather than "if a penalty will be imposed." The substitution of "whether or not" for "if" more accurately reflects the statutory language, although the Board recognizes that this language may be interpreted as requiring a negative disclosure where no penalty is imposed. The change in tense is designed to alleviate the concerns expressed by commenters regarding the use of the phrase "will be imposed." Many credit contracts call for the imposition of prepayment penalties only if the loan is paid off within a certain period after consummation or under other special circumstances and commenters were concerned that an absolute statement regarding imposition would be misleading. Even where the contract places conditions on the imposition of such a penalty, this paragraph requires only a simple statement of wherether or not a penalty may be imposed.

The word "penalty," as used in paragraph (k)(1), encompasses only those charges which are assessed strictly because of the prepayment in full of the obligation, as an addition to all other amounts. Charges assessed or contemplated at the outset of the transaction, such as points in a mortgage loan, would not be considered a penalty for purposes of this paragraph.

Paragraph (k)(2) eliminates any reference to "precomputed finance charges," which has been the source of some confusion, but, in a substantially revised form, continues to require the same information currently required. The focus of the disclosure has been shifted, however, from whether the consumer may receive a rebate to whether the consumer may be excused from paying the entire finance charge if the obligation is prepaid in full. Comment is solicited on this proposal.

Paragraph (k) has also been revised by the addition of the phrase "whether voluntarily or not" in response to questions regarding the type of prepayment subject to this provision. Although acceleration is no longer specifically addressed in the paragraph, the language used is designed to encompass prepayments resulting from acceleration as well as other events.

(1) *Late payment.* This paragraph, which requires disclosure of late payment charges, is unchanged from § 226.11(f)(11) of the May proposal, but the Board wishes to address several issues raised by the comments regarding this provision.

First, as noted in the May proposal, this disclosure relates only to charges imposed before maturity; unlike the current regulation, it requires no disclosure of default charges. If the creditor considers the loan as in default, any charges assessed as a result would not be disclosed under this paragraph. The only charge that must be disclosed under paragraph (1) is an additional charge incurred solely by reason of a late payment. Previous staff opinion letters such as official staff interpretation FC–0054, relating to the proper disclosure of default charges, will not be incorporated into the new regulation since the questions they address will no longer arise.

Second, the continued accrual of simple interest at the contract rate between the payment due date and the actual payment date does not constitute a late payment charge, as that term is used in this paragraph. The additional interest assessed for this period is not disclosable under this paragraph.

(m) *Security interest.* This paragraph, requiring disclosure of a security interest, has been revised from § 226.11(f)(12) of the May draft by the deletion of the second sentence, relating to after-acquired property. Disclosure of this provision is not mandated by the statute and the Board believes that its elimination is in accord with the goals of simplification.

As noted in the May proposal, this disclosure has been significantly reduced by statute from its counterpart in the current regulation. The paragraph no longer requires disclosure of the type of security interest taken. In addition, the creditor need not further describe the property to which the security interest attaches if the property purchased with the credit serves as collateral for the obligation. The **Federal Register** material accompanying the May proposal limited this aspect of the paragraph only to credit sale transactions. Under the new proposal, however, any transaction in which the credit is being used to purchase the collateral is considered a purchase money transaction and may use the more abbreviated property identification disclosure required for those types of transactions, even when the obligation does not meet the definition of a credit sale.

In non-purchase money transactions, the property subject to the security interest must be identified by "item or type." This disclosure would be satisfied by a general disclosure of the category of property subject to the security interest, such as "household goods." At the creditor's option, however, a more precise identification of the goods may be provided.

The question of what constitutes a security interest that must be disclosed under this paragraph is addressed in the definition of a security interest in § 226.2 of the proposal. As noted in that discussion, the definition is much narrower than that used in the current regulation. It excludes many incidental property interests, such as an interest in insurance proceeds, unearned insurance premium rebates, accessions and improvements.

(n) *Insurance charges.* This paragraph requires disclosure of the information outlined in § 226.4(d), if creditors wish to exclude credit life and property insurance premiums from the finance charge. The only revision to this paragraph is the substitution of the word "items" for the word "disclosure," with no change in meaning intended.

As noted in discussion of § 226.17(b)(1), this disclosure is one of three § 226.18 terms which may appear apart from the other disclosures. If this disclosure is made separate from the other transactional disclosures, it may appear with any other information, including the amount financed explanation, any information prescribed by state law or other supplementary material.

Several commenters asked that the Board authorize as part of this disclosure the statement that insurance coverage is based on an acceptance of the insured by the insurance carrier. This statement is not required by the regulation and, in the Board's view, its inclusion would be contrary to the goals of simplification. If the creditor wishes to make the statement, it must be treated as additional information and appear apart from the segregated disclosures.

(o) *Excludable charges.* This paragraph, § 226.11(f)(14) in the May draft, requires disclosure of certain charges associated with a security interest, if the creditor wishes to exclude those charges from the finance charge. This disclosure is identical to its counterpart in the May proposal and, like paragraphs (a) and (n) above, is one of three disclosures which may appear, at the creditor's option, apart from the other § 226.18 disclosures.

(p) *Contract reference.* This paragraph, requiring a reference to the contract documents for certain additional information, has been revised from § 226.11(f)(15) of the May proposal by the addition of a second sentence. This amendment permits the creditor to include in the statement a reference to contract information regarding a security interest and the creditor's policy regarding assumption of the obligation. While these items are not part of the information required by § 128(a)(12) of the act, the Board believes that their inclusion may be useful to consumers and solicits comment regarding this provision. Comment is also solicited on whether these references should continue to be at the creditor's option or should be made mandatory.

The Board also solicits comment on whether the language of paragraph (p) should be used precisely in complying with the regulation or whether creditors may alter this statement to provide further information. For example, several creditors asked whether a reference to the specific contract document, such as "promissory note" or "retail installment contract," could be substituted for the more general phrase "contract document." The Board is also considering whether the statement required by this paragraph may be divided and its component parts placed with the particular disclosures to which they relate. For example, the statement "see your contract for further information regarding prepayment" could accompany the disclosure made under paragraph (k) if this approach were adopted. Comment is specifically solicited on this aspect of paragraph (p).

(q) *Assumption policy.* This paragraph, which requires creditors in residential mortgage transactions to state their assumption policy, is based on § 226.11(f)(16) of the May proposal. It has been amended to emphasize that an absolute statement of assumability is not required. Many creditors expressed concern that the May proposal would commit them to permitting assumptions, when their assumption policy was based on a variety of circumstances which could not be foreseen at the time the disclosure is made. The language of this proposal requires only that the consumer be told whether or not a subsequent purchaser "may be permitted" to assume the obligation on its original terms. A footnote has been added to this paragraph to clarify the meaning of the phrase "original terms."

Section 226.19—Certain residential mortgage transactions.

This section, which implements § 128(b)(2) of the act, was previously reflected in § 226.11(g) of the May draft. It requires early disclosure of credit terms in residential mortgage transactions that are subject to the requirements of the Real Estate Settlement Procedures Act (RESPA). Truth in Lending disclosures must be given either within three business days after the creditor's receipt of a written application from the consumer or before consummation, whichever is earlier. The three-day requirement coincides with the time period within which creditors subject to RESPA must provide a good faith estimate of settlement costs.

While paragraph (a) is unchanged from § 226.11(g)(1) of the May proposal, many commenters requested that "application" be more precisely defined. In light of congressional intent that RESPA and Truth in Lending disclosures be coordinated, the Board proposes to use the same definition of "application" as is used in RESPA. That act provides that disclosures must be given for each "written application on an application form or forms normally used by the lender." If a lender does not use written applications, disclosures must be given within three days after any information about an applicant is committed to writing. Comments were received suggesting several different definitions of "application," and the Board solicits comment on its choice of the RESPA definition.

Several commenters asked that regardless of how "application" is defined, the regulation exempt from the disclosure requirements any applications that are rejected by a creditor within three days. In the Board's view, Truth in Lending disclosures are not necessary where the creditor knows within that period that no transaction will occur and the Board proposes to exempt creditors from making disclosures in such cases. Comment is solicited on this issue.

The change from the May draft's definition of "business day" should alleviate some of the problems raised by creditors with regard to making disclosures under this paragraph. The new definition includes only days on which a creditor's offices are open to the public for carrying on substantially all business functions and creditors may measure the three business day period according to their own business practices.

The tolerance governing whether new disclosures must be made at a later time, which is contained in paragraph (b), has been revised from its counterpart in § 226.11(g)(2) of the May draft to reflect the new proposed tolerance in § 226.22. The general tolerance continues to be ⅛ of 1 percentage point above or below the annual percentage rate originally disclosed, but irregular transactions will now be measured against a new tolerance of ¼ of 1 percentage point. This wider tolerance would be available for any transaction involving multiple advances, irregular payments or irregular periods.

Paragraph (b) has been significantly amended to require redisclosure only of changed terms, rather than a complete set of new disclosures, in the event that the annual percentage rate is determined to be beyond the tolerance. Many commenters suggested this alteration to alleviate the burden of redisclosure. They expressed concern that redisclosure would normally be required because the annual percentage rate between the time of application and the time of consummation would usually vary by more than ⅛ of 1 percentage point. Comment is requested on how frequently the problem of redisclosure would arise, particularly in light of the increased tolerance, and on whether redisclosure of only changed terms would alleviate this problem.

Section 226.19 has been changed from § 226.11(g) of the May draft to require that redisclosure be made not later than consummation, instead of not later than consummation or settlement. Commenters were confused as to whether these terms were intended to signify one event or two different events since consummation and settlement do not occur at the same time in some jurisdictions. In addition, the term "settlement" could refer to any one of a number of events occurring during the settlement process. In the Board's view, limiting redisclosure to "consummation," which is a defined term, will help to simplify and add certainty to the regulation. This approach may also best effectuate the congressional intent to coordinate Truth in Lending and RESPA disclosures.

Several commenters asked that the Board clarify the relationship between the good faith estimates of settlement costs required under RESPA and the explanation of the amount financed required under Truth in Lending. The legislative history indicates that Congress envisioned a combined disclosure which could satisfy the requirements of both statutes and a model form for that purpose has been provided in §G(4) of Appendix G.

The Board recognizes that a variety of special types of mortgage transactions have become increasingly common in the housing finance industry and are not specifically addressed in the regulation. These include so-called "wrap-around mortgages" such as that addressed in official staff interpretation FC–0146, mortgages with demand features similar to those discussed in Board Interpretation § 226.816, and "shared equity" or "shared appreciation" mortgages. This last type of transaction may involve numerous variations in individual plans, but is characterized by two types of charges. First, it bears a fixed rate of interest set below the prevailing market rate. In addition, the loan is subject to "contingent" interest, based on a specified percentage of the borrower's equity in the mortgaged property. This portion of the charge is payable at the earlier of payment in full of the obligation, or the sale or transfer of the property. For example, the monthly amortization payments on the obligation may be based on a fixed interest rate of 9%; on the subsequent sale of the property, the borrower is also obligated to pay the creditor an amount equal to 40% of the net appreciated value of the property. Several of these plans have been subject to regulation by the Federal Home Loan Bank Board. The Board solicits comment on whether these transactions warrant specific treatment in Regulation Z. Comment is particularly welcome on the special disclosure problems, if any, posed by such transactions and on whether their coverage by other regulations should affect the application of Regulation Z to them.

Section 226.20—Subsequent disclosure requirements.

(a) *Refinancings.* This paragraph substantially alters the concept of refinancing, as that term is defined in § 226.11(i) of the May proposal and § 226.8(j) of the current regulation. The two latter provisions generally define a change in the original terms as a refinancing, subject to a variety of exceptions and special rules. Under the new proposal, a refinancing which requires new Truth in Lending disclosures occurs only when an existing obligation is satisfied and replaced by a new obligation.

The focus of Truth in Lending disclosures, at least with respect to closed-end credit transactions, is on providing consumers with information about credit terms before they enter into a transaction. The act itself does not address events occurring after consummation; the concept of refinancing, as well as other post-consummation events such as an assumption, was added to the regulation by the Board. The Board's primary concern in creating this concept was to address the practice of "flipping," in which a loan involving precomputed finance charges is prepaid and replaced with a new obligation. Depending on the rebate method used in calculating unearned finance charges on the existing obligation, this practice may permit lenders to obtain a higher yield on the loan than they would have obtained had the loan been paid off according to its original terms. While the refinancing provision does not prohibit this practice, it may provide consumers with useful information regarding its effect on the cost of credit.

The standard used in the current regulation to define a refinancing requiring new disclosures has been very difficult to apply, as evidenced by the many letters, interpretations and special rules which have evolved from this provision. Particularly in view of the fact that this concept is purely a creature of the regulation, the Board believes that the current revision of the regulation presents a unique opportunity to thoroughly reexamine this approach and explore alternatives.

While the May proposal differed somewhat from the current regulation, it retained the present approach of treating any change in terms as a refinancing, subject to a number of exceptions listed in §§ 226.11(i) (2), (3) and (4) of that proposal. Many commenters criticized this approach as unnecessarily broad and suggested that the Board define refinancings in a manner similar to the way in which that term is used in the credit industry, to refer only to the extinguishing of a debt and its substitution with a new obligation.

For three reasons, the Board now proposes to adopt this substantially altered definition of refinancing. First, the Board believes that this definition most closely resembles the types of transactions intended to be covered by the original refinancing concept. Second, the proposal focuses specifically on those changes that are most analogous to new credit transactions and thus represent true credit-shopping events. Third, the proposal may provide a simpler and more precise standard for determining when a refinancing requiring a new disclosure occurs.

The Board recognizes that this standard may substantially alter the distinctions drawn in the current regulation and related interpretations between refinancings and changes not requiring new disclosures. The Board solicits comment on this proposal and particularly on how it would affect those changes in terms that were specifically exempted from the refinancing definition in the May proposal. These changes include deferrals of payments, reduction of the annual percentage rate, court-approved agreements, renewals of single-payment obligations and changes made as a result of default.

(b) *Assumptions.* This provision has been revised from § 226.11(j) of the May draft to clarify when new disclosures must be given to an assuming party. First, the provision applies only to residential mortgage transactions, which represent the type of transaction in which assumptions are most common and most important.

Second, the provision has been revised to require new disclosures only where the agreement to accept a new obligor is in writing. This is the standard used under the present regulation for determining whether disclosure responsibilities arise. Comment was solicited in May about whether the writing requirement should be retained or eliminated and the commenters overwhelmingly favored its retention.

Finally, the word "expressly" has been added to the first sentence to stress that the creditor has disclosure responsibilities only when it has specifically agreed to accept another person as an obligor.

Mere approval of creditworthiness or notification of a change in records would not constitute an assumption. The retention of the original consumer as an obligor on the transaction, however, does not prevent the change from constituting an assumption for purposes of the regulation.

Some commenters expressed concern about use of the term "subsequent consumer," particularly since it might include guarantors added after consummation of a transaction. The provision has been revised so that only those parties who become primary obligors will receive new disclosures.

The Board wishes to emphasize two additional points regarding the scope of paragraph (b). First, it applies only to consumer credit obligations that are assumed by another consumer. It does not address whether a consumer taking over the obligation of a corporation, for example, is entitled to Truth in Lending disclosures. Second, it applies only when the terms of the existing obligation are unchanged (except for the imposition of an assumption fee). If the interest rate on an obligation is increased when a new party is accepted on a mortgage loan, this would not be considered an assumption governed by this provision, but rather would be considered a different transaction altogether, to be measured against the general standard of coverage of Regulation Z.

The provision continues to require that assumption disclosures be based on the remaining obligation, which may include items such as payment arrearages, late payment charges and collection costs. If these items are part of the obligation undertaken by the subsequent customer and are not prepaid, they should be reflected in the new amount financed.

Some commenters on the May proposal requested further guidance on the content of assumption disclosures and suggested that the substance of present Board Interpretation § 226.807 be incorporated. Simple interest transactions do not appear to require special rules in the new regulation, but the Board solicits comment on whether it is necessary to provide special rules for other types of transactions. Comment is requested on what specific problems would be faced in making new disclosures on all obligations, how frequently the problems would arise, and how those problems should be handled in the final regulation.

Section 226.21—Treatment of credit balances.

This provision is new and establishes requirements for the treatment of credit balances. It implements § 165 of the act, the scope of which has been broadened to apply to any type of credit account, not merely open-end accounts.

The act provides that a credit balance in excess of $1 created by (1) transmittal of funds in excess of the total balance due on the account, (2) rebates of unearned finance charges or insurance premiums, or (3) amounts otherwise owed to or held for the benefit of an obligor must be either credited to the consumer's account or refunded upon the consumer's request. With respect to closed-end credit, the Board believes these requirements will be applicable to such situations as the debtor paying off a loan by transmitting funds in excess of the total balance due on the account, and the early payoff of a loan entitling the debtor to a rebate of title insurance premiums and finance charges. In the Board's view, the statutory language regarding "total balance due" refers to repayment of the total outstanding balance. Thus, this provision would be inapplicable where the customer has simply paid an amount in excess of the installment payment due for that period.

The act requires the creditor to make a good faith effort to refund to the consumer any part of the credit balance remaining in the account for more than six months. When the consumer's current location is not known by the creditor, the statute contemplates that the minimum tracing requirement will include use of both the consumer's last known address and telephone number. A creditor is not required to trace the consumer when the amount of the credit balance is less than $1. If the consumer cannot be traced, the Board believes that the disposition of the money remaining in the account after six months is a matter of state law. The fact that a consumer cannot be traced through the last known address or telephone number in no way sanctions the creditor's treating the balance as income or making other disposition of it.

The Board solicits comment on its implementation of § 165 of the act and welcomes views on the application of this section to closed-end credit transactions.

Section 226.22—Determination of annual percentage rate.

This section, formerly § 226.12 of the May draft, has been significantly expanded by the incorporation of a special tolerance for irregular transactions and the temporary reinstatement of the special protection for use of faulty calculation tools. In addition, several minor editorial changes, not intended to affect the substance of the section, have been made.

Section 107(c) of the act authorizes the Board to provide a tolerance greater than ⅛ of 1 percentage point in transactions involving irregular payments. Although the regulation provides a special rule for payment irregularities, this rule is limited to several slight irregularities and has no application to the majority of complex transactions. In view of the potential difficulty of calculating an annual percentage rate in complex transactions and congressional recognition of this fact, the Board believes that a wider tolerance may be appropriate. Therefore, § 226.22(a) has been redrafted to provide a tolerance of ¼ of 1 percentage point for irregular transactions, which the Board proposes to define as those involving multiple advances, irregular payments, or irregular payment periods. The Board specifically solicits comment on the general issue of a wider tolerance for these transactions, as well as on the definition of an irregular transaction, the amount of the tolerance, and whether the allowable tolerance should vary with the size of the transaction. At this time, the Board proposes to retain the special rule in § 226.17(c)(4) along with the new tolerance, so that irregular transactions may utilize either or both of these provisions, but solicits comment on this matter as well.

The May draft would have eliminated the special protection afforded creditors for errors resulting from good faith use of faulty calculation tools, now contained in § 226.5(c) of the current regulation. The Board continues to believe that this regulatory provision will no longer be appropriate or necessary, particularly in light of the expanded defense for such errors in § 130, the civil liability provision of the act. However, several commenters expressed concern about the availability of the amended § 130 defense before April 1, 1982, and requested that a form of present § 226.5(c) remain in the regulation until that time. The Board believes that the continued availability of the special provision is appropriate and proposes to reinstate this protection by the addition of § 226.22(e) to the draft. As noted in paragraph (f)(2) of the section, the special rule would be rescinded as of April 1, 1982. The Board solicits comment on this proposal.

Section 226.23—Right of recission.

(a) *Consumer's right to rescind.* Paragraph (a), which implements § 125(a) of the act, is based on § 226.13(a) of the May proposal. It provides the right to rescind a transaction secured by the consumer's principal dwelling. As in the May draft, the right applies to any property, personal or real, used as the consumer's principal dwelling at the time the security interest is retained. However, paragraph (a)(1) differs from the earlier draft in that the statutory language "is or will be" has been reincorporated. The Board believes that this phrase may be necessary to clarify that security interests not retained at consummation of the transaction may still give rise to the right of rescission. For example, materialmen's or mechanic's liens arising by operation of law may not arise until performance has begun. The right of rescission may still be applicable in such transactions, even when the security interest has not yet been created.

Under paragraph (a)(1), any consumer whose principal dwelling is subject to a security interest may rescind. Section 226.2 defines "consumer" to include a comaker, endorser, guarantor, surety or similar person who may be obligated to repay the extension of credit. The Board believes that this definition encompasses persons who are not parties to the credit agreement but who have signed the security agreement. Therefore, a joint owner in this situation must be given the right of rescission, if the property represents that consumer's principal dwelling.

Several commenters requested further guidance regarding the effect of materialmen's liens, as well as other liens arising by operation of law, on the right of rescission. In order to give rise to the right of rescission, the security interest must be retained "in the credit transaction." A materialmen's lien obtained by a contractor who is not a party to the credit transaction, but merely receives the proceeds of the consumer's unsecured bank loan, does not create a rescindable transaction between the bank and the consumer. The security interest is in that case not a term of the *credit* transaction but is obtained by an unrelated third party. However, a security interest acquired by a contractor who is the creditor in the transaction creates a rescindable transaction, because the security interest is retained in connection with the credit extension. The same result occurs when a materialmen's lien is retained by a subcontractor of a creditor-contractor, even when the latter has waived its rights under the law. In the Board's view, the subcontractor is acting as the agent of the creditor-contractor in such cases and the security interest therefore forms part of the credit transaction. This position incorporates current Board Interpretation § 226.901.

The footnote to paragraph (a)(1), dealing with addition of a security interest to an existing obligation, has been expanded in two ways. First, only the notice required by paragraph (b), and not new material disclosures, need be delivered in such cases. Second, the footnote specifically provides that the rescission period is triggered by delivery of the rescission notice.

Paragraph (a)(2) reflects both the existing regulation and the May draft. It provides that the consumer's written notification that the transaction has been rescinded is considered given to the creditor when mailed or filed for telegraphic transmission. Although many commenters requested that notification be considered given upon receipt by the creditor, the Board believes that the existing rule best serves the purposes of this provision. Many of these comments were prompted by a misunderstanding of the effect of this rule. The Board wishes to emphasize that the 20-day limit on the obligations in paragraph (d) runs from receipt of the notice, not the time of mailing.

Paragraph (a)(3) has been revised to clarify that the rescission period runs from the last of three events: Consummation, delivery of the rescission notice required by paragraph (b) of this section, and delivery of the material disclosures. The rescission notice and material disclosures need not be delivered at the same time. The material disclosures as defined in the footnote are intended to be exhaustive. For example, they do not include an explanation of the amount financed or information regarding the security interest. Moreover, for purposes of rescission, the material disclosures need not be accompanied by descriptors.

The last portion of paragraph (a)(3) provides for termination of an unexpired right of rescission three years from consummation or upon the transfer of the property, whichever comes first. Transfer of the property means any transfer of the consumer's entire interest. Both voluntary and involuntary transfers, including a foreclosure sale, terminate the right to rescind.

The rule in § 226.9(f)(1) of the current regulation has been added as paragraph (a)(4) to clarify that transactions in which more than one consumer's ownership interest is at risk may be rescinded by any one of the consumers involved.

(b) *Notice of right to rescind.* This paragraph has been revised in four ways. First, the proposal reinstates the requirement that creditors provide two copies of the notice. Second, the phrase "to each consumer entitled to rescind" has been added to clarify that the creditor must deliver the copies to all consumers whose ownership interest in the dwelling secures the obligation. Third, a new disclosure requirement, the date of expiration of the rescission period, has been added as paragraph (b)(5). Fourth, creditors must identify the transaction to which the right applies. This may be done, for example, by giving the date of the transaction.

The notice in Appendix G provides a model for creditors to use in complying with this requirement, although that form need not be used. The creditor may provide a separate form that a consumer may use to exercise the right of rescission or that form may be combined with the other rescission disclosures, as is done in the Board's model form. Creditors may designate an agent to receive notice from consumers.

(c) *Delay of creditor's performance.* Paragraph (c) restates § 226.9(c) of the existing regulation and § 226.13(c) of the May draft, with minor editorial changes.

(d) *Effects of rescission.* This paragraph differs from § 226.13(d) of the May draft in four respects. First, it has been divided into subparagraphs in order to more clearly delineate the obligations of the creditor and the consumer. Second, in addition to the change in format, the statutory word "tender" has been reinstated in place of "offer" because the terms may not be synonymous under state law.

Third, the paragraph has been revised to clarify that the consumer's option to tender at the location of the property or at the residence, rather than at the creditor's place of business, applies only to the tender of goods and materials. A tender of money must be made at the creditor's place of business.

Fourth, the paragraph uses the term "calendar days" in describing the time periods within which the creditor must return any money or property and reflect the security interest termination, and subsequently take back any money or property tendered by the consumer. This editorial change reflects the staff's longstanding interpretation of this provision.

Many commenters requested that the Board allow creditors to utilize offsets, escrow agreements and other similar alternative methods of complying with their reponsibilities in a rescinded transaction. However, the Board believes that, in view of the act's specificity in this regard, it would not be appropriate or necessary to provide further elaboration in this area.

Many commenters also addressed the application of paragraph (d)(2), which requires that the creditor return any money or property given by the consumer as amounts paid to third parties. In the Board's judgment, because section 125(b) of the act requires that creditors return any money or property given as earnest money, downpayments, *or otherwise,* creditors must return all monies including downpayments, application fees and fees paid to third parties. This reflects the position taken in staff interpretations of the current regulation.

(e) *Consumer's waiver of right to rescind.* The paragraph differs significantly from its counterpart in both the May draft and the existing regulation with regard to the nature of the emergency giving rise to a waiver. The emergency need no longer endanger persons or property. The consumer need only determine that the extension of credit is necessary to meet a bona fide personal financial emergency. This standard essentially mirrors that in section 125(d) of the act. The Board believes that the current regulatory implementation of that statutory provision may be unnecessarily narrow and solicits comment on this revision. While the requirements for a waiver would be eased, this provision continues to prohibit the use of preprinted forms for this purpose, in order to prevent any abuse of the waiver rule.

(f) *Exempt transactions.* The changes made in this paragraph are generally editorial and are not intended to alter the substance of the May draft.

Paragraph (f)(2) incorporates in a revised format the current position taken in Board Interpretation § 226.903 concerning the right of rescission in refinancings.

Paragraph (f)(4) corresponds to the proposed § 226.11(d), covering series of advances and series of single-payment transactions. Just as new disclosures need not be made for subsequent advances, no new rescission rights arise so long as the appropriate notice was provided at the outset of the transaction. Subsequent advances for renewal premiums addressed in Board Interpretation § 226.814 would also come within this exemption.

Paragraph (f)(5) of the May draft, which concerned subsequent subordination of a security interest, has been deleted as unnecessary because the right of rescission no longer depends on the priority status of the lien.

Section 226.24—Advertising.

Section 226.24 contains rules for advertising closed-end consumer credit. It is based on § 226.14 of the May proposal but contains several substantive and editorial revisions.

(a) *Actually available terms.* This paragraph corresponds to paragraph (a)(1) of the May draft and requires that advertisements state only those terms that the creditor is actually prepared to offer. Several commenters suggested retaining the "will arrange" language of the current regulation so that creditors may also advertise limited or unusual credit terms. The deletion of such language is not intended to inhibit the promotion of new credit programs, but to prohibit the advertising of terms which the creditor does not actually intend to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time, but may advertise a rate that will be offered for only a limited period.

Section 226.14(a)(2) of the May draft, prohibiting inaccurate or misleading advertising, has been deleted as unnecessary. Many commenters expressed concern about this provision, which they believe is already adequately addressed in a variety of other laws.

(b) *Advertisement of rate of finance charge.* Paragraph (b) requires that advertised rates be stated in terms of an annual percentage rate. As in § 226.18(f), relating to disclosure of a variable rate, the rate increase disclosure requirement in this paragraph does not apply to any rate increase due to delinquency (including late payment), default, assumption, or transfer of collateral.

(c) *Advertisement of terms that trigger additional disclosures.* Paragraph (c)(1) sets forth the credit terms which, if used in an advertisement, require disclosure of the credit terms listed in paragraph (c)(2). Several commenters suggested that the phrase "or otherwise determinable from" be deleted from paragraph (c)(1) because they deemed it too vague a standard for determining when a trigger term has been stated. This phrase was included in the May draft to cover such promotional statements as "80% financing available" which is, in fact, indicating that a 20% downpayment is required. The Board believes that this phrase should be retained, to clarify that terms which are implicit from the advertisement trigger further disclosures.

The terms "no downpayment is required" and "no charge for credit" have been eliminated from the list of triggering terms in the new draft. These terms are not mandated by the statute.

The footnote to this paragraph reflects Board Interpretation § 226.1001, which deals with the advertisement of credit terms when all credit sales or loans are not made on the same basis. The advertisement of credit terms may be made by giving one or more examples of typical extensions of credit and stating all of the terms applicable to each example. The examples must be labeled as such and must reflect representative credit terms that are made available by the creditor to present and prospective customers.

A number of commenters suggested that paragraph (c)(2)(i), relating to downpayments, be clarified to indicate that it is applicable only to credit sale transaction. Since the term "credit sale" has now been incorporated into the definition of downpayment in the new draft of the regulation, a specific reference to credit sales appears unnecessary in this paragraph.

Paragraph (c)(2)(i) has been revised so that creditors may state either the amount or percentage of the downpayment. When a transaction involves no downpayment, creditors need not state that fact.

Paragraph (c)(2)(ii) has been revised to read "terms of repayment," as provided in the statute, instead of "number, amounts and timing of repayment." This change is designed to provide greater flexibility to creditors in making this disclosure. Repayment terms may be expressed in a variety of ways in addition to the exact repayment schedule. For example, a creditor may use a unit-cost approach in making the required disclosure, e.g., "48 monthly payments of $27.83 per $1,000 borrowed." As another example, in an advertisement for credit secured by a dwelling, when any series of payments varies because of a graduated payment feature or because of the inclusion of mortgage insurance premiums, a creditor may comply with paragraph (c)(2)(ii) of this section by stating the number and timing of payments, the amounts of the largest and smallest of those payments, and the fact that other payments will vary between those amounts. This example corresponds to § 226.14(d) of the May draft of the regulation and reflects Board Interpretation § 226.808 of the current regulation.

Several commenters argued that residential mortgage transactions should be completely exempted from the advertising restrictions, on the grounds that the annual percentage rate is difficult to compute for these transactions and that other information, such as simple interest rates, points and loan fees, is more crucial to consumers for comparison shopping purposes. In the Board's view, the evidence available does not support an exemption of this nature but further comment on this matter is welcome.

(d) *Catalogs and multiple-page advertisements.* Paragraph (d) corresponds to § 226.10(b) of the current regulation. It incorporates the requirement in current Board Interpretation § 226.1002 that the tables or schedules of terms in catalogs include all amounts up to the level of the more commonly sold higher priced property or services. In the Board's view, the remaining portion of that interpretation, regarding the method of computing disclosures and the $1,000 limit on the examples, is unnecessary and its inclusion would be contrary to the concept of simplification.

It should be noted that the May draft of § 226.14 included the disclosure requirements regarding oral responses to inquiries about the cost of credit. Since oral responses are advertisements within the meaning of § 226.2, this provision has been moved to Subpart E of the regulation.

Subpart D—Consumer Leasing

Section 226.25—Definitions.

This section incorporates the definitions in § 226.2 of the May draft that are applicable solely to leasing. Terms that may apply to other provisions of the regulation as well as Subpart D are still defined in § 226.2.

Arrange for a lease. This definition no longer requires that arranging for a lease be a transaction that occurs "regularly," as the definition of "lessor" makes such a requirement unnecessary. Otherwise, this definition is unchanged from the May draft.

Consumer lease. This definition is unchanged from the May draft except to add, for purposes of clarification, that leases which are defined as "credit sales" are not within the definition of a "consumer lease."

As stated in the commentary to the May draft, a month-to-month lease, with no penalty for cancelling before five months and with an obligation to pay only the rental and any accrued and unpaid charges, is not subject to either the credit or leasing provisions of Regulation Z. It is not a credit sale because the consumer does not agree to pay a sum substantially equivalent to, or in excess of, the aggregate value of the property and service involved. It is not a consumer lease because the original term does not exceed four months. This position is consistent with longstanding Board interpretations and is based on the statutory definitions of transactions subject to the Consumer Credit Protection Act.

May commenters objected on this position and urged the Board to extend the coverage of the regulation of these leases. The commenters pointed out that customers may, as a result of unscrupulous business practices, be misled about the true cost of these leases and deprived of important information. While the Board recognizes and shares these concerns, it continues to believe that such leases are beyond the scope of the act. The act itself does not appear to provide an approporiate vehicle for eliminating abuses in this area and congressional action may be needed to address these concerns.

A month-to-month lease with a penalty for cancelling before five months or with an obligation to pay more than the total of the rental and accrued and unpaid charges may be a consumer lease. However, such a lease would not be a credit sale, because the consumer does not agree to pay a sum substantially equivalent to or in excess of the aggregate value of the property and services involved. It should be noted that requiring notice before termination is not a penalty for the purposes of either the "credit sale" or "consumer lease" definitions.

Lessor. This definition, like the definition of "creditor," has been altered to provide a more reliable guide for determining who has disclosure responsibilities. Under the proposed definition, if a person has extended or arranged for a lease more than 25 times in the calendar year preceding the transaction in question, that person is a lessor and must make disclosures. The Board solicits comment on whether the test is appropriate.

Realized value. This definition is unchanged from the May draft.

Total lease obligation. This definition is substantially unchanged from the definition in the current regulation. However, the proposed definition permits noncapitalized sales taxes on the monthly payments to be included in the scheduled periodic payments in calculating the "total lease obligation."

Value of the property at consummation. This definition is unchanged from the May draft.

Section 226.26—Disclosures.

Section 226.26 of the proposal contains the leasing disclosure provisions and corresponds to § 226.15 of the May draft and the current regulation. Although the proposal retains the organizational framework that appeared in the May draft, it substantively changes the content. New requirements in the May draft that would have altered leasing forms have been eliminated, because the Truth in Lending Simplication and Reform Act did not amend the consumer leasing provisions. Although the Board favors a simplified leasing regulation, it believes that further modifications should await Congressional action. Consequently, this proposal more closely resembles and clarifies the current regulation. The proposal has also been redrafted to mirror certain changes made in the closed-end credit provisions that do not require alteration of disclosure forms.

The leasing forms that appear in current Board Interpretations §§ 116.1501 and 226.1502 are incorporated, without change, in Appendix H of this proposal. The Board invites lessors to submit their consumer leasing forms and to suggest improvements to the forms in Appendix H.

(a) *Time and form of disclosures.* This paragraph corresponds to § 226.15(b) of the May draft. It no longer requires the disclosures to be grouped together and segregated from all other disclosures, because these requirements conflict with the more permissive requirements in section 122(b) of the act. Moreover, the deleted provisions would have required burdensome lease form alterations. The proposal, however, requires the disclosures to be written clearly and conspicuously, as mandated by § 182 of the act.

(b) *Basis of disclosures and use of estimates.* When the lessor lacks the information needed to make accurate disclosures, it must make disclosures based on the best information reasonably available. For example, when determining the estimated value of a leased vehicle at the end of the term, the lessor may use the "blue book" value as the best information reasonably available. In the alternative, the lessor may rely on its objective experience with local used motor vehicle markets and long-term price trends, if that experience better approximates the actual value of the vehicle at the end of the lease term.

Section 226.15(c)(2) in the May draft permitted a lessor to understate the estimated value of the leased property, provided it returned any excess of realized value over estimated value to the consumer at the end of the lease term. This provision has been deleted because it would have required lessors to alter their lease forms. The substance of current § 226.6(f), which provides that a lessor may understate the estimated value only in a purchase option lease, has been reinstated.

(c) *Multiple lessors multiple consumers.* This paragraph corresponds to § 226.15(a) (1) and (2) of the May draft but eliminates the general statements that a lessor must provide disclosures to a consumer. The Board believes that this material is unnecessary and has revised the paragraph to address only multiple-consumer and multiple-lessor transactions, where specific guidance may still be needed. In the first sentence, the word "need" replaces the word "shall" to indicate that more than one lessor is permitted to make disclosures when a lease involves multiple lessors. Only one complete set of disclosures need be given.

(d) *Effect of subsequent events.* This proposal eliminates the provision in the May draft that required new disclosures before consummation if the original disclosures were rendered inaccurate by an event occurring after delivery. For purposes of this paragraph, the act of mailing the disclosures to the consumer constitutes "delivery."

(e) *Content of disclosures.* As in the May draft, the lessor need make only those disclosures that apply to its leasing practices. For example, if a lessor does not secure the performance of a lease by taking a security interest in the consumer's property, the lessor is not required to disclose a security interest under paragraph (e)(12) of this section.

Paragragh (e)(1) clarifies that the consumer to whom disclosures are made is the only consumer whose identity need be disclosed.

Paragraph (e)(4) is substantially unchanged from the May draft. Some examples of payments that are disclosed under this provision are a refundable security deposit, advance payment, capitalized cost reduction, and trade-in allowance. This paragraph retains the May draft provision requiring a "brief description" of the payments. The phrase "brief description" replaces the current regulatory phrase "appropriately identified," although no substantive change is intended.

Paragraphs (e)(6) and (e)(7) are modified to permit lessors to retain their current disclosure forms. The paragraphs now permit, but do not require, the exclusion of charges that were previously disclosed. Lessors who currently include previously disclosed charges in these amounts may continue to do so.

The May draft of paragraphs (e)(10) and (e)(12) required lessors to alter their disclosure forms. This proposal modifies those paragraphs to eliminate the need for any alteration of forms. Paragraph (e)(10) no longer requires a brief description of any maintenance or service contract, while paragraph (e)(12) eliminates disclosure of a security interest in after-acquired property.

Paragraph (e)(12) requires the disclosure of a security interest as defined in § 226.2 and the accompanying explanatory material to that section. This term does not include certain incidental items such as insurance proceeds, unearned insurance premiums, or accessions to property.

The May draft of paragraph (e)(13) added excessive wear or use charges to the list of required disclosures for default, delinquency or late payment. Excessive wear or use charges have been deleted from the paragraph, because their disclosure might require lessors to alter their forms. The Board solicits comments on whether excessive wear or use charges are in the category of default charges and whether the inclusion of such charges would alter lease forms. As stated in official staff interpretation FC-0156, paragraph (e)(13) does not require the disclosure of accrued lease charges in a "simple interest" lease when a periodic payment is deferred. This proposal also retains the May draft exclusion of deferred extension charges from the disclosure requirements of paragraph (e)(13). The Board solicits comments on whether the exclusion of these charges is appropriate.

The remaining provisions in paragraph (e) are substantially similar to their counterparts in the May proposal.

(f) *Special disclosures concerning consumer's liability on termination of lease.* Proposed paragraph (f) corresponds to §§ 226.15(b)(13), (14), and (15) of the current regulation, and appears as a separate disclosure provision to emphasize that the disclosures relate only to open-end leases. An open-end lease imposes liability on a consumer at the end of the lease term for the difference between the realized value of the leased property determined at that time and the estimated value disclosed at consummation. The term "realized value" is defined in § 226.25 of the proposal.

Paragraph (f) eliminates two disclosure requirements that appeared in the May draft because they required a change in lessors' forms. Lessors need not disclose whether an appraisal will be based on the wholesale or retail value of the leased property, nor that an appraisal is final and binding only if obtained within a reasonable time. As proposed, this paragraph returns to the substantive requirements of the current regulation.

(g) *Renegotiations requiring new disclosures.* Proposed § 226.26(g) sets forth a new rule for determining when a renegotiation occurs. It states that new disclosures are required only when an existing consumer lease is satisfied and replaced by a new consumer lease.

Paragraph (g) substantially alters the concept of renegotiation that was proposed in the May draft. Under the earlier proposal, any change of a term originally disclosed was considered a renegotiation unless one of several exceptions applied. Commenters criticized the rule as unnecessarily broad, particularly in its coverage of deferred payments and payment schedule changes that result from the consumer's default.

The renegotiation concept is a regulatory creation; it is not addressed in the statute. The Board believes that the current revision of the regulation presents a unique opportunity to thoroughly reexamine this approach and explore alternatives.

The Board is proposing this standard as a simpler and more meaningful rule for determining when new disclosures must be given. It believes that this rule defines more precisely the situations that are analogous to new consumer lease transactions and thus require comparable treatment. Moreover, this approach parallels the revised refinancing provision in § 226.20(a) for closed-end credit. If the parties to a consumer lease agree to change the original terms by creating a new lease that replaces the old lease, new disclosures must be given reflecting the terms of the new lease. An assumption of the lease by a consumer who was not a party to the original lease is not a renegotiation. If terms are changed without extinguishing the existing lease, no disclosures are required under this proposal. For example, if the parties agree to defer one or more payments, no Regulation Z lease disclosure responsibilities arise, as long as the existing lease has not been satisfied and replaced.

The Board solicits comment on whether this standard is workable and whether it would include in and exclude from the category of renegotiations the appropriate situations. The proposal expressly retains the renegotiation exception permitting the substitution or addition of items in a multiple-item lease. The Board contemplates that the substitution of property in a single-item lease, such as an automobile lease, constitutes a renegotiation. The Board is particularly interested in knowing the impact of the proposed rule on certain common changes in terms. These changes include deferrals of payments, the addition or renewal of optional insurance, an extension of the lease term with no other changed terms, a change in collateral requirements, a change in late charges, post-default changes, agreements approved by a court, and an informal oral agreement between the lessor and consumer.

The reference to "an existing lease" includes leases subject to the present Regulation Z as well as those subject to the revised regulation.

(h) *Extensions.* Proposed § 226.26(h) is a new paragraph and corresponds to §§ 226.15(g)(2)(iv) and (g)(3) of the May draft. It requires lessors that extend a consumer lease beyond the original term to abide by the presumptions and duties in section 183(a) of the act.

The extension provisions that appear in the current regulation, the May proposal, and this proposal are regulatory creations. The act does not specifically address the effect of an extension on the lessor's section 183(a) statutory duties. The Board solicits comment on whether it is appropriate to clarify those duties when a lease is extended.

If a lease is extended for one month or less, the lessor must determine the consumer's end-of-term liability on the basis of the original estimated value of the leased property. If a lease is extended for one month or more, on a month-to-month basis or otherwise, the lessor must still comply with statutory section 183(a) duties. Moreover, to clarify the May draft, the proposal requires the lessor to redetermine the estimated value of the leased property when the extension terminates and the property is returned. The estimated value should be reduced by an amount reflecting the depreciation that occurred over the extended time period.

The lessor may use any reasonable method to determine the depreciation that results during an extension; it need not engage in complex recomputations. A new footnote provides a simplified method that the lessor may use to determine the reduced estimated value of the property. Assuming that a portion of each periodic payment reflects the depreciation of the leased property that correlates with the original estimated value, the footnote permits the lessor to subtract the depreciation portion of each periodic payment made during the extension from the original estimated value. If the leased property appreciates instead, this provision is inapplicable. Lastly, if a lessor prefers, it may treat an extension as a renegotiation requiring new disclosures.

Section 226.27—Advertising.

This section is substantially unchanged from § 226.16 in the May draft.

(a) *Actually available terms.* The May draft permitted an advertisement to state only those terms that a lessor "generally arranges or offers." A number of comments were received suggesting that the provision would prohibit lessors from advertising new terms. To prevent such misunderstanding, the paragraph has been amended. The new proposal would require that an advertisement which states specific consumer lease terms state only those terms that the lessor "actually arranges or offers." The

Board believes that this language is flexible enough to permit the offering of special programs and new terms while at the same time prohibiting the "bait and switch" practices that paragraph (a) is intended to prevent.

(b) *Advertisement of terms that require additional disclosures.* This paragraph is substantively the same as § 226.16(b) in the May draft.

(c) *Multiple-item leases; merchandise tags.* This paragraph is the same as § 226.16(c) in the May draft, except that it no longer requires that the merchandise tag "clearly" refer to a sign or display, or that the sign or display be "prominently" posted. The requirements of clarity and prominence were vague and might have caused unnecessary difficulty in compliance.

(d) *Catalogs and multiple-page advertisements.* This paragraph is substantively the same as § 226.16(d) in the May draft.

Subpart E—Miscellaneous

Section 226.28—Record retention.

The general rule in paragraph (a) states that records must be retained for a period of two years from the date disclosures must be given. Editorial changes were made in order to more clearly delineate a creditor's responsibilities in this area. The time period is the same for creditors and lessors since the Board is not persuaded of any operational problems with the present rule.

The language regarding the retention of advertising materials has been deleted from paragraph (a) to reflect the fact that advertising is not covered by the record retention provisions. This is in accord with present regulatory requirements, and many commenters objected to the May proposal's coverage of advertising.

This proposal requires, as did the May proposal, that evidence of compliance, "including information sufficient to reconstruct the required disclosure," be maintained. Some commenters expressed concern about this language, but it is not intended to require more information to be retained than under the present regulation, which simply requires that evidence of compliance be maintained. For example, if a creditor normally keeps computer programs, this information would satisfy the record retention requirements; a creditor, however, is not *required* to keep them. As under the present regulation, creditors need not retain each periodic statement.

The word "relevant" has been added to paragraph (c) regarding the inspection of records. This change continues the present regulation's language and is intended to alleviate the concern of some commenters who believed that the May proposal had expanded agencies' rights to inspect information.

Section 226.29—Use of annual percentage rate in oral disclosures.

This section incorporates §§ 226.10(d) and 226.14(f) from the May proposal. It requires a statement of the annual percentage rate in responding to oral inquiries about the cost of credit.

Section 226.30—Spanish language disclosures.

The language in the May proposal remains basically unchanged. Disclosures must be made in English, except in Puerto Rico, where creditors may disclose in Spanish. If foreign language disclosures are required by state, federal, or local law, they would not be inconsistent with disclosures under this regulation and may be given in addition to English disclosures. Under the regulation, however, English disclosures must be made clearly and conspicuously.

Section 226.31—Effect on state laws.

(a) *Inconsistent disclosure requirements.* The Board has substantially revised this section and specifically solicits comment on its provisions.

Proposed paragraph (a)(1), formerly paragraph (a) of the May proposal, includes a standard for the evaluation of inconsistent state and federal disclosure requirements. Under this provision, state law is inconsistent with, and therefore preempted by, federal law if a creditor or lessor, in complying with state law, violates federal law. State law is preempted only to the extent of the inconsistency. So long as a creditor or lessor can comply with state law without violating federal law, state law is not inconsistent. This general rule applies to Subpart B (open-end credit), Subpart C (closed-end credit), and Subpart D (consumer leasing).

This provision differs from the May proposal, which contained no criteria for the determination of inconsistency. A number of commenters requested the inclusion of standards to serve as an aid to compliance with this paragraph and as a guide to the factors the Board would use in making a preemption determination. In response to these comments, the Board has revised the paragraph to include the standard outlined above. It is intended to be used by creditors and lessors before any Board determination of inconsistency is made. In addition, if such a determination is requested, the Board would use this standard in reaching its decision. The Board believes that providing this standard will facilitate creditors' making independent preemption decisions.

Paragraph (a)(2) reflects the rule for fair credit billing and consumer leasing provisions. As in the previous proposal, state law that is more protective of the consumer in these areas is not inconsistent.

The only revision made to the "more protective" provision of proposed paragraph (a)(2) was the inclusion of § 226.21 in the list of applicable paragraphs. This paragraph, dealing with the treatment of credit balances in close-end credit, is included here as an additional fair credit billing reference.

Proposed paragraph (a) prohibits the disclosure of any state requirement that is inconsistent and therefore preempted. If a creditor chooses to give a state-required disclosure that is not preempted, the disclosures required under this regulation must be made in conformance with its clear and conspicuous standard.

(b) *Equivalent disclosure requirements.* Paragraph (b) deals with state disclosure requirements that are substantially similar to federal disclosures. In the case of such equivalent requirements, the state disclosure may be made in place of the federal. As in the May proposal, the Board has provided no specific criteria for determining substantial similarity. Because of the unique circumstances and the potential for variety among the states' requirements, this paragraph proposes that standards be determined on a case-by-case basis.

This paragraph contains an exception for the finance charge and annual percentage rate disclosures. As interpreted by the Board, section 122(a) of the act requires that the specific terms "finance charge" and "annual percentage rate" be used, state law notwithstanding, and additionally, that they be disclosed more conspicuously than other required information.

(c) *Request for determination.* This paragraph establishes the procedures for seeking a Board determination on inconsistent and equivalent disclosure requirement. The procedures outlined in this provision have been revised by the addition of paragraph (c)(4). This proposal responds to several commenters that requested a transition period after a Board determination so that necessary changes in forms and procedures could be made. The effective date proposed here, October 1, provides a uniform date, while allowing at least six months in each case for complying with a Board determination. This is based on § 105 of the act.

Appendices A–I

Appendix A, which outlines the procedures for state exemptions, has been moved from § 226.20 of the May proposal because it primarily addresses administrative matters. The section has been revised to include a paragraph about the effective date of exemption determinations. Section II states that any determination as to the exemption of a class of transactions shall be effective on October 1. This provision is based on § 105 of the act which allows creditors at least six months to adjust their forms to comply with amendments to the regulation.

Several commenters requested that the status of current exemptions under the new regulation be clarified. The Board envisions that the existing exemptions under the current statute and regulation will be automatically revoked on April 1, 1982, when the new statute become effective. Since the new regulation must be in effect by April 1, 1981, those states currently having exemptions will have at least one year during which to amend their statutes and regulations, apply for exemptions, and receive new exemption determinations from the Board.

The standard for exemption contained in Section I is unchanged from paragraph (a) of the May proposal and provides that an exemption will be granted if state law is "substantially similar" to the requirements of federal law, or, for credit billing and leasing transaction, if state law affords greater protection to the consumer than federal law. As the supplements to the current Regulation Z indicate, the "substantially similar" standard has been interpreted as requiring state provisions to be generally the same as federal provisions. The standards for exemptions are set forth in Supplements II (credit transactions), IV (credit care issuance and liability), V (credit billing) and VI (consumer leases).

Appendix B deals with the issuance of official staff interpretations. Since it relates to administrative matters, it has been moved from § 226.21 of the May proposal.

In Section I, which replaces paragraph (a) of the May proposal, the Statement that "a creditor or lessor who acts in conformity with an official staff interpretation, whether the creditor or lessor actually knows of the interpretation or not, shall not be held liable" has been deleted. Instead, § 130(f) of the act, which affords certain protection from civil liability, has simply been cited. Because the civil liability provisions of the act have not been implemented in the regulation, the Board believes that it would be inappropriate to interpret the applicability of the civil liability provisions.

Proposed Section II, which sets forth the procedure for issuing official staff interpretations, has been substantially revised. The proposal provides that official staff interpretations be published for comment in the **Federal Register.** After the comment period has ended, official staff interpretations will be republished in the **Federal Register** and will become effective at that time. This procedure differs from that in the May proposal and in the current regulation, which provide that official staff interpretations published in the **Federal Register** will become effective 30 days after publication unless a request for public comment is received and granted. The Board hopes to expedite the official staff interpretation process by immediately publishing interpretations for comment, rather than waiting for a request for public comment, suspending the effective date, and republishing for comment. Experience indicates that a request for comment is received in most cases, necessitating suspension of the effective date.

Several commenters were concerned with paragraph (d) of the May proposal, which is now Section III. This provision exempts forms required or sanctioned by a government agency from the general prohibition of issuing staff interpretations approving creditors' forms. This treatment is available to government agencies in order to implement section 113(a) of the act which requires government agencies to consult with the Board regarding their forms.

Paragraph (c) of the May proposal, which explained the procedures for issuing unofficial staff interpretations, has been deleted. In the Board's opinion, the regulation should reflect only the procedures for issuing official staff interpretations because they are founded on the statute. While Section II establishes the procedure for issuing interpretations that are to be recognized as providing protection from civil liability under § 130(f) of the statute, the provisions on unofficial staff interpretations in the May proposal simply explained an internal Board procedure. This procedure may no longer prove necessary in light of the Truth in Lending simplification effort and the Board's intention to issue, and update periodically, a commentary to the regulation in lieu of staff letters.

Appendix C incorporates Board Interpretation § 226.709 with editorial changes that are not intended to be substantive in nature.

Appendix D incorporates the substance of current Board Interpretation § 226.813. That interpretation provides a special procedure that creditors may use at their option in calculating and disclosing the terms of multiple-advance transactions when the amounts and timing of advances may be unknown at consummation of the transaction. In a revised format, this appendix utilizes a similar mathematical basis as the interpretation, but has been redrafted for greater clarity. The format reflects the approach taken in § 226.17(c)(6) of this proposal, which permits creditors to provide separate or combined disclosures for the construction period and for the permanent financing, if any.

The appendix would now be limited specifically to construction loans. Currently, all multiple-advance transactions may take advantage of Board Interpretation § 226.813. In view of the fact that its assumptions, formulas, and examples are based only on the typical construction loan, the Board believes that its use for other types of transactions, where such assumptions may not be valid, is inappropriate. Therefore, the Board proposes to limit this appendix to those multiple-advance construction loans which are either payable in a single sum at close of the construction period or converted to permanent financing by the same creditor at that time. The Board solicts comment on this proposal.

Appendix E incorporates in its entirety Appendix B of the May proposal.

Appendices F, G, and H contain model forms and clauses for use in open-end and closed-end credit transactions and leasing transactions. Amended section 105 of the act requires the Board to publish such models to facilitate compliance by creditors and to aid consumers in understanding their transactions. Use of these models is not mandatory; however, as provided in section 105(b), creditors who use them properly will be deemed to be in compliance with the requirements of the regulation. It is intended that creditors have some flexibility in adapting the models to their own particular specifications. Creditors may delete inapplicable information in a number of ways, such as crossing out or whiting out inapplicable information, or by circling the correct information. Creditors may make deletions and rearrange the format, provided the substance, clarity and meaningful sequence of the disclosures is not affected. Any changes beyond very minor revisions such as those described may deprive creditors of the protection provided in the statute for the use of model forms.

The phrases in brackets are given as alternatives and may be changed to suit the specific terms of the transaction. For instance, the disclosure of the later charge in §§ G(1) and G(2) states that when a payment is late, "I will be charged ($) (% of the payment)." The creditor would choose which type of late charge is appropriate and would make the necessary changes. Another example is the disclosure of prepayment consequences. The word "not" in either sentence could be crossed out or circled, as appropriate.

The Board believes that the models would satisfy the requirements of state "plain-English" laws. However, comment is solicited on any potential problems which may arise in the use of the models for transactions subject to such laws.

Comment is solicited on all aspects of these model forms and clauses, including design, content, and usefulness. If additional models should be provided, suggestions will be welcome.

Appendix F sets forth the model disclosure notices and clauses for open-end credit transactions. Four areas are covered by these models: (1) Balance computation method, § F(1); (2) billing error rights, §§ F(2) and F(3); (3) liability for unauthorized use, § F(4); and (4) right to rescind, §§ F(5) through F(7). Several changes in organization and language have been made in the forms in an attempt to make the disclosures easier to read and understand.

The models for the disclosure of billing error rights, §§ F(2) and F(3), have been reorganized and the phrase "disputed amount" has been changed to "questioned amount." No substantive change is intended by these revisions.

In § F(4), the word "card" was substituted for "device" in the bracketed phrase in the first sentence. This change is to clarify that the liability provision applies only to credit cards. The words "and telephone number" have been deleted from the second bracketed phrase in the second sentence, to conform the model notice to a corresponding change in § 226.12(b)(2).

Section F(7) is new. It provides a notice of the right to rescind which may be used when the credit limit on an open-end account secured by the consumer's dwelling is being increased.

Appendix G sets forth models and samples for closed-end transactions. There are two models for the basic closed-end credit transaction, § G(1) which contains sale disclosures and § G(2) which contains loan disclosures. These sections are identical except for disclosure of the total sale price which applies only to credit sale transactions. These models were published as one form in § A(7) of the May draft. Items not generally applicable to all transactions are marked by dotted lines. The descriptive phrases that accompany the required terminology are suggested language only; alternative phrases may be used, so long as they convey the same meaning.

It is anticipated that the last category in the payment schedule disclosure, "when payments are due," could be completed at least three different ways: dates alone (Jan. 1, Feb. 10, March 20); periods alone (monthly beginning March 1); or a combination of the two (quarterly on Jan. 15, April 15, July 15, and Oct. 15).

The insurance provisions may appear with the other disclosures, as shown on the model, or they may appear elsewhere in the contract documents. The Board contemplates that the premium disclosures for the credit life, credit life and disability, and property insurance be either the cost for the entire term of the obligation or the unit cost.

The model form for the explanation of the amount financed, which appears as § G(3), differs significantly from its counterpart in § A(8) of the May draft. The Board believes that creditors should be given a considerable amount of flexibility in order to facilitate compliance with the regulation. The Board also believes that some precision is necessary and appropriate, both to provide guidance to creditors and to prevent unnecessary confusion to consumers.

The Board proposes to apply three specific guidelines and requests comment on each of them. First, the categories shown must be mutually exclusive. For example, any amounts included in the prepaid finance charge (such as a credit report fee paid to a third party in a nonrealty transaction) cannot be listed as an amount paid to a third party. Second, the model does not require the amounts to be shown in mathematical order or progression. Third, the Board proposes the creation of one category of fees which need not include an identification of an individual third-party payee. Amounts paid to government entities or public officials may be described merely as fees to "public officials" or by similar language. This is in contrast to the general requirement that the name of the party to whom amounts are being paid must be identified specifically and the amount itemized accordingly.

The model form which appears as § G(4) is new and combines certain disclosures required by the Real Estate Settlement Procedures Act (RESPA) with the explanation of the amount financed under the Truth in Lending Act. This model has been designed for creditors subject to the special early disclosure rule in § 226.19(g), which requires creditors subject to RESPA and Truth in Lending to make the disclosures required under both statutes within three business days of receiving a consumer's written application. This form has been designed to simplify these disclosures for creditors by combining in one form the good faith estimates of settlement costs required under Regulation X, which implements RESPA, and the explanation of the amount financed required under Regulation Z. Creditors should look to § 3500.7 of Regulation X to determine what settlement statement numbers and what settlement services to disclose, and to § 226.18(b) to determine whether to list a settlement service as a prepaid finance charge, a charge included in the amount financed, or a charge paid in cash. The form is only a proposal and has not been officially approved by the Department of Housing and Urban Development. The Board solicits comment on the usefulness of this model form.

The paragraph beside the asterisk describes the providers of settlement services. If a creditor requires a consumer to use a specific provider of services, the creditor must place an asterisk beside the settlement service listed at the top of the form and disclose the information required in this paragraph. A space for the description of the services has been omitted from this paragraph although it is required under RESPA. This has been done on the assumption that the creditor will fully describe the services provided at the top of the form. If the creditor does not do so, a space must be provided in the paragraph below for describing the services. For instance, if a creditor discloses attorney's fees as one of the settlement services, it must list at the top of the form what services are included, such as document preparation services or a title search. When this is not done, the creditor must list document preparation services and title search below. Sample III illustrates the proper disclosure of required services by designated providers.

The Board wishes to point out that use of this form is entirely optional and creditors may continue to provide RESPA disclosures and Truth in Lending disclosures separately. If this combined disclosure form is used, however, creditors may not state the cost of services in terms of ranges of amounts. Although ranges are permitted under RESPA, they are not permitted under Truth in Lending. The Board believes that in order to provide a meaningful combined disclosure statement to consumers, costs must be stated as a single estimated amount, rather than as a range of amounts.

Appendix G contains three samples which illustrate how a specific creditor might actually fill out one of the model forms. Each of the samples is based on a specific transaction and illustrates the adaptation of a model form to a particular sale or loan. The samples illustrate permissible alterations in the model forms, including deletion of information that is not applicable to the individual transaction. As long as the required Truth in Lending information for a specific transaction is disclosed consistent with § 226.17(b), creditors may adapt the model forms to their own use in the manner best suited to their procedures. The Board solicits comment on the usefulness of the samples and on suggestions for additional samples to be included with the final regulation.

Sample I is for an automobile credit sale involving precomputed interest, with credit life insurance and filing fees financed by the creditor. This example is based on the model credit sale form in § G(1), but several disclosures have been deleted. The information regarding the consumer's right to receive an explanation of the amount financed has been omitted because it is assumed that the creditor automatically furnishes the explanation in all cases. Unnecessary portions of the payment schedule and the non-filing and property insurance information have been eliminated, as well as the information regarding assumptions, which is required only in residential mortgage transactions. Where alternatives are included in the model disclosure form, such as in the late charge, security interest, and prepayment disclosures, the appropriate disclosure has been circled and the inapplicable alternative crossed out. The dots surrounding the insurance information and the acknowledgment of receipt have been deleted since their only purpose in the model disclosure form is to indicate the optional nature of these disclosures.

The explanation of the amount financed in Sample I is based on the model form in § G(3). In this example, the amount paid on the consumer's account equals $6000, while the filing fee and the credit life insurance premium represent the amounts paid to others on the consumer's behalf. Since this transaction involves no amounts given to the consumer directly or paid to another creditor, these items may be marked N/A or O on the form. The prepaid finance charge of $25 equals the amount paid for the credit form.

Sample II, which assumes a $5,000 amount financed, is based on the model loan disclosure in § G(2). No amount financed explanation is provided because the consumer has elected not to receive this information. Since this is an unsecured obligation, the security interest information has been crossed out. The inapplicable information in the late charge and prepayment disclosures has been deleted, as has the acknowledgment of receipt.

Sample III is for a mortgage transaction subject to RESPA and is based on the model loan form in § G(2). The transaction is a $50,000 loan at a 14 percent simple interest rate for 30 years. A sample form based on § G(4), combining RESPA and Truth in Lending disclosures, is also included in Sample III. When the creditor uses the combined form, the explanation of the amount financed would automatically be furnished to the consumer and the creditor may delegate the information on the disclosure statement regarding the consumer's right to receive the explanation. Since the sample is based on a simple interest rate transaction, the first sentence in the prepayment disclosure relating to rebates has been deleted. However, if the transaction called for both rebates and penalties in the event of prepayment, both sentences, reflecting the appropriate information, would be necessary.

Other inapplicable information has also been deleted, such as the property insurance disclosure and one of the late charge disclosure alternatives. In addition, clauses describing the property to which the security interest attaches have been deleted and alternative language substituted. The phrase "the property being purchased" is used, since it is more appropriate than "goods" for a mortgage transaction.

The explanation of the amount financed categorizes each settlement cost in the transaction as either a prepaid finance charge, a charge included in the amount financed, or a charge paid in cash. The categorization in the sample form is based on § 226.4 of Regulation Z. Since the settlement fee is included as a prepaid finance charge in the sample, it is assumed that this fee covers only the cost of conducting the closing, and not other services, such as document preparation, that would be excluded from the finance charge under § 226.4(b). The services grouped under attorney's fees are all excluded from the finance charge under § 226.4(b) and are categorized as charges paid in cash. If other charges were included as part of the attorney's fees, they would be prepaid finance charges, which must be listed separately in the setlement service column and included in the prepaid finance charge column. As the asterisk indicates, the attorney's services must be furnished by a designated provider. Therefore, further information is provided in the paragraph below. These services need not be described further in that place because they are listed individually above.

The sample mortgage form is based on a relatively simple transaction in order to focus attention on the use of model form § G(4). While transactions with varying payment streams may increase the complexity of the disclosures, this fact should not affect the combined amount financed explanation and RESPA disclosure contained in § G(4). The Board solicits comment, however, on whether further samples for mortgage transactions with complex payment schedules would be useful.

Appendix H contains model disclosures for leasing transactions. The leasing forms that appear in current Board interpretations to Regulation Z are reprinted, without change, in §§ H(1), H(2), and H(3). The open-end or finance vehicle lease disclosure statement that appears in present Board Interpretation § 226.1501 is redesignated § H(1) in the proposal; the closed-end or net vehicle lease and the furniture lease disclosure statements in present Board Interpretation §§ 226.1502 and 226.1503 have been redesignated §§ H(2) and H(3), respectively.

These forms are based on a monthly periodic payment. Lessors that contemplate a weekly payment schedule should modify the forms by replacing the word "monthly" with the word "weekly," as applicable.

Appendix I provides a list that indicates the appropriate federal enforcement agency to be contacted for information regarding compliance with this regulation.

In consideration of the foregoing and 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 issue a revised Regulation Z (12 CFR Part 226) as follows:

PART 226—TRUTH IN LENDING

Subpart A—General

Sec.
226.1 Authority, purpose, coverage, organization, penalties and liabilities.
226.2 Definitions and rules of construction.
226.3 Exempted transactions.
226.4 Finance charge.

Subpart B—Open-End Credit

Subpart C—Closed-End Credit

Subpart D—Consumer Leasing

Subpart E—Miscellaneous

Authority: Sec. 105, Truth in Lending Act (15 U.S.C. 1604, as amended).

Subpart A—General

§ 226.1 Authority, purpose, coverage, organization, penalties and liabilities.

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

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit and consumer leases by requiring disclosures about the terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit or consumer leases.

(c) *Coverage.* (1) In general, the credit provisions contained in Subparts B and C of this regulation apply to each individual or business that offers to extend credit when four conditions are met: (i) The credit is offered to consumers; (ii) the offering of credit is done regularly; (iii) the credit is subject to a finance charge or is repayable by a written agreement in more than four installments; and (iv) the credit is primarily for personal, family, or household purposes. If a credit card is involved, however, certain provisions will apply even if the credit is not subject to a finance charge, or is not repayable under a written agreement in more than four installments, or if the credit card is to be used for business purposes.

(2) The leasing provisions of Subpart D generally apply to each individual or business that offers to lease or arranges for the lease of property when five conditions are met: (i) The leases are offered to or arranged for consumers; (ii) the offering or arranging of leases is done regularly; (iii) the leases are of personal property; (iv) the lease term is for more than four months; and (v) the leases are primarily for personal, family, or household purposes.

(d) *Organization.* The regulation is divided into five subparts and nine appendices as follows:

(1) Subpart A contains general information. It sets forth: (i) The basis, purpose, coverage, and organization of the regulation; (ii) the definitions of basic terms; (iii) the transactions that are exempted from coverage; and (iv) the method of determining the finance charge for consumer credit obligations.

(2) Subpart B contains the rules for open-end credit. It requires that initial and periodic statement disclosures be provided. It also describes special rules that apply to credit card transactions, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising rules.

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

(4) Subpart D contains consumer leasing disclosure requirements and advertising rules.

(5) Subpart E contains rules on oral disclosures, Spanish language disclosure in Puerto Rico, record retention, and preemption of inconsistent state laws.

(6) There are also nine appendices. Three contain model disclosure forms and clauses for credit and lease transactions; others contain rules for computing annual percentage rates, procedures for state exemptions and staff interpretations, and special rules for certain open-end credit disclosures.

(e) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 130, 131, 134, and 185 contain the liability provisions for failing to comply with the requirements of the act and the regulation.

§ 226.2 Definitions and rules of construction.

(a) *Definitions.* For the purposes of this regulation, the following definitions apply:

"*Advertisement*" means a commercial message in any medium that is designed to promote, directly or indirectly, any credit or lease transaction.

"*Arranger of credit*" means a person who offers more than 25 times in a year (or more than 5 times in a year for transactions secured by a dwelling) consumer credit to be extended by another person if:

(1) A finance charge may be imposed for that credit, or the credit is payable by written agreement in more than 4 installments (not including a downpayment); and

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

"*Billing cycle*" or "*cycle*" means the interval between the days or dates of regular periodic statements. These intervals shall be no longer than a quarter of a year. They shall be equal and may be considered equal unless the number of days in a cycle varies more than 4 days from the regular day or date.

"*Board*" means the Board of Governors of the Federal Reserve System.

"*Business day*" means a day on which a creditor's offices are open to the public for carrying on substantially all of its business functions.

"*Cardholder*" means a natural person to whom a credit card is issued upon the request or application of that person for consumer credit purposes, or a natural person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person. For the purposes of §§ 226.12 (a) and (b) of Subpart B, "cardholder" also includes any person to whom a credit card is issued upon the request or application of that person for any purpose, including business, commercial, or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

"*Card issuer*" means a person that issues a credit card or that person's agent with respect to the card.

"*Cash price*" means the price at which a creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. The term includes charges imposed by a creditor equally on cash and credit customers. It may include the price of optional accesories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

"*Closed-end credit*" means consumer credit other than "open-end credit" as defined later in this section.

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

"*Consumer credit*" means credit extended or offered to a consumer primarily for personal, family, or household purposes.

"*Consummation*" means the time that a consumer becomes contractually obligated on a credit or lease transaction.

"*Credit*" means the right to defer payment of debt or to incur debt and defer its payment.

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

"*Creditor*" means:

(1) A person (i) who extends consumer credit more than 25 times in a year (or more than 5 times in a year for transactions secured by a dwelling), if the credit may be subject to a finance charge or is payable by written agreement in more than 4 installments (not including a downpayment), and (ii) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract;

(2) An arranger of credit;

(3) For purposes of §§ 226.4(f), 226.9(d), and 226.12(e) of Subpart B, a person that honors a credit card; or

(4) For purposes of Subart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments; or

(5) For purposes of Subparts B and C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

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

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

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

"*Downpayment*" means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment and need not be reflected in the amount financed and payment schedule disclosed under § 226.18, if it is payable not later than the due date of the second otherwise regularly-scheduled payment and is not subject to a finance charge.

"*Dwelling*" means a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes individual condominium units, cooperative units, mobile homes, and trailers, if used as a residence.

"*Open-end credit*" means consumer credit extended by a creditor on an account under a plan in which:

(1) The creditor reasonably contemplates repeated transactions;

(2) The consumer has the privilege of paying the balance in full at any time, without penalty when payment is made in full;

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

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

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

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

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

"*Prepaid finance charge*" means any finance charge paid before or at consummation of a transaction or withheld from the principal amount of the credit at any time.

"*Regular price*" means:

(1) The tagged, posted, or advertised price; or

(2) The price charged when payment is made by use of an open-end credit card account if (i) no price is tagged, posted, or advertised, or (ii) two prices are tagged, posted or advertised, one of which is charged when payment is made by use of an open-end credit card account and the other when payment is by other means.

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

"*Security interest*" or "*security*" means an interest in property that secures performance of a consumer credit or lease obligation and that is recognized by and enforceable under state or federal law. It does not include incidental interests such as an interest in proceeds, accessions, additions, fixtures, insurance proceeds or premium rebates, nor does it include the status as loss payee or beneficiary on an insurance policy. For purposes of disclosure under §§ 226.6, 226.18, and 226.26, the term does not include any interest that arises by operation of law. However, for purposes of the right of rescission under §§ 226.15 and 226.23, the term does include interests that arise by operation of law.

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

(b) *Rules of construction.* For the purposes of this regulation, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words "obligation" and "transaction" are used in this regulation, they refer to a consumer credit or a consumer lease obligation or transaction, depending upon the context. Where the words "credit" and "lease"

are used in this regulation, they mean "consumer credit" and "consumer lease," respectively, unless the context clearly indicates otherwise.

(3) Where the words "the act" are used in this regulation, they refer to the Truth in Lending Act as amended, Title 15 of the United States Code §§ 1601 *et seq.*, unless the context clearly indicates otherwise.

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

(5) Footnotes have the same legal effect as the next of the regulation.

§ 226.3 Exempted transactions.

This regulation does not apply to the following:

(a) *Business, commercial, agricultural, or organizational credit.* (1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) Credit extended to organizations, including credit to governmental agencies or instrumentalities.[1]

(b) *Credit over $25,000 not secured by real property or a dwelling.* An extension of credit, not secured by real property or personal property used or expected to be used as a principal dwelling of the consumer, in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000.

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

(d) *Securities or commodities accounts.* Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

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

(2) A lease of personal property incident to a lease of real property, if the consumer has no liability for the value of the property at the end of the lease (except for abnormal wear and tear) and has no option to purchase the leased personal property.

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

(f) *Home fuel budget plans.* An installment agreement for the purchase of home fuels in which no finance charge is imposed.

[1] Extensions of credit that are exempt under paragraphs (a) (1) and (2) remain subject to the provisions governing the issuance of credit cards and the liability for their unauthorized use, as set forth in §§ 226.12(a) and (b).

§ 226.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction. The finance charge shall be considered accurate if the amount disclosed does not vary from the exact finance charge by more than the dollar amount equivalent of the annual percentage rate tolerance described in §§ 226.14(a) or 226.22(a)(2), as applicable.

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

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

(2) Service, transaction, activity, or carrying charge, including any charge imposed on a checking or other transaction account to the extent that it exceeds the charge for a similar account without a credit feature.

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

(4) Application, appraisal, investigation, or credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

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

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

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

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

(c) *Charges excluded from finance charge.* The following charges shall be excluded from the finance charge.

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

(2) A charge imposed by a financial institution for paying an item that inadvertently overdraws an account.

(3) A fee charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(4) The following fees, in a transaction secured by real property or a residential mortgage transaction, if they are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, or similar purposes.

(ii) Fees for preparing a deed, mortgage, reconveyance, settlement, or similar document.

(iii) Notary, appraisal, or credit report fees.

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

(5) Seller's points.

(6) An interest reduction on a time deposit used as security for an extension of credit.

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

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

(ii) The premium for the initial term of insurance coverage or the unit cost of the premium for a stated period is disclosed. If the term of insurance is less than the other term of the transaction, the term of insurance shall be disclosed.

(iii) The consumer signs or initials an affirmative written statement requesting the insurance after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the statement.

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

(i) The insurance coverage may be obtained from a person of the

[2] This includes single interest insurance if the insurer waives all right of subrogation against the consumer.

consumer's choice,[3] and this fact is disclosed.

(ii) If coverage may be obtained from or through the creditor, the premium for the initial term of insurance coverage or the unit cost of the premium for a stated period shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall be disclosed.

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

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

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

(f) *Discounts*—(1) *Limitations.* A discount offered for the purpose of inducing payment for a purchase by cash, check, or similar means rather than by the use of an open-end credit card account (whether or not a credit card is physically used) is not a finance charge under paragraphs (a) and (b) of this section if:

(i) The discount does not exceed 5 percent of the regular price of the property or service; and

(ii) The discount is available to prospective purchasers, whether or not they are cardholders, and this fact is clearly and conspicuously disclosed.

(2) *Effect of state laws.* A discount that is not a finance charge under this paragraph shall not be considered a finance charge or other charge for credit under any state law relating to usury, disclosure of information in connection with credit extensions, or permissible charges for the extension or use of credit.

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

Subpart B—Open-End Credit

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing in a form that the consumer may keep.

(2) The words "finance charge" and "annual percentage rate," when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required terminology. This rule does not apply to § 226.7(d) and to advertisements under § 226.16.

(b) *Timing of disclosures*—(1) *Initial disclosures.* The creditor shall furnish the initial disclosure statement to the consumer before the first transaction is made under the plan.

(2) *Periodic statements.* (i) The creditor shall mail or deliver a periodic statement for each cycle at the end of which the account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account the creditor deems to be uncollectible.

(ii) The creditor shall mail or deliver the periodic statement at least 14 days prior to any date or the end of any time period required to be disclosed by § 226.7(k) in order for the consumer to avoid the imposition of an additional finance or other charge.[4] If the creditor fails to meet this requirement, no finance or other charges that were imposed as a result of the creditor's failure may be collected.

(c) *Multiple creditors; multiple consumers.* If the open-end credit plan involves more than one creditor, only one creditor need provide the consumer with a complete set of disclosures. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. When the right of rescission under § 226.15 is applicable, however, the disclosures required by § 226.6 and § 226.15(b) shall be made to each person having the right to rescind.

(d) *Basis of disclosures and use of estimates.* Disclosures shall be based on the assumption that the consumer will comply with the terms of the legally enforceable obligation between the parties. If any information necessary to make an accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available to it and shall state clearly that the disclosure is an estimate.

(e) *Effect of subsequent events.* If a disclosure is rendered inaccurate as a result of an event that occurs after delivery of the disclosures, the resulting inaccuracy is not a violation of this regulation, although new disclosures may be required under § 226.9(c).

§ 226.6 Initial disclosure statement.

The creditor shall disclose to the consumer, in terminology consistent with that in quotation marks in § 226.7, each of the following items, to the extent applicable:

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

(1) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge.[5] If no such time period is provided, that fact shall be disclosed.

(2) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable [6] and the corresponding annual percentage rate (determined by multiplying the periodic rate by the number of periods in a year).[7] If different periodic rates apply to different types of transactions (such as purchases and cash advances), those periodic rates and their corresponding annual percentage rates shall be disclosed, together with the types of transactions to which they apply.

(3) An explanation of the method used to detemine the balance on which the finance charge may be computed.

(4) An explanation of how the amount of any finance charge will be determined,[8] including a description of how any other finance charge other than the periodic rate will be determined.

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

(c) *Security interests.* The fact that the creditor has or will acquire a security interest either in the property purchased as part of the plan, or in other property identified by item or type.

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[3] A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.

[4] This time limitation shall not apply if the creditor is unable to meet this requirement because of an act of God, war, civil disorder, natural disaster, or strike.

[5] If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's termination.

[6] A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

[7] Where a creditor is offering a variable rate plan, the creditor shall also disclose: (1) That the periodic rate(s) and corresponding annual percentage rate(s) are subject to increase; (2) the circumstances under which such rates may increase; and, if applicable, (3) the limitations on such rates.

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

(d) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under § 226.12(c) and § 226.13 and that is substantially similar to the statement found in Appendix F.

§ 226.7 Periodic statements.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) *Previous balance.* The outstanding account balance at the beginning of the billing cycle, using the term "previous balance," and in the case of a credit balance, an appropriate identification as such. Where there is more than one type of transaction (such as purchases and cash advances), the creditor may show a previous balance for each type of transaction.

(b) *Identification of transactions.* An identification of each credit transaction in accordance with § 226.8.

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

(d) *Periodic rates.* Each periodic rate, using the term "periodic rate," that may be used to compute the finance charge, the range of balances to which it is applicable,[9] and the corresponding annual percentage rate (determined by multiplying the periodic rate by the number of periods in a year), using the term "corresponding annual percentage rate."[10] When different periodic rates apply to different types of transactions to which the periodic rates apply shall also be disclosed.

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

(f) *Balance on which finance charge computed.* The amount of each balance to which a different periodic rate was applied and an explanation of how each balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of such credits and payments shall be disclosed.

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

(h) *Annual percentage rate.* When a finance charge is imposed during the billing cycle, the annual percentage rate or rates determined under § 226.14, using the term "annual percentage rate." Where an annual percentage rate cannot be determined under § 226.14(c)(2)(i), no annual percentage rate need be disclosed.

(i) *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

(j) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the outstanding account balance on that date, using the term "new balance," and in the case of a credit balance, an appropriate identification as such. If the periodic statement reflects more than one type of transaction, the creditor may show a new balance for each type of transaction.

(k) *Free-ride period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid in order to avoid the imposition of additional finance charges.[11]

(l) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 226.9(a)(2).

§ 226.8 Identification of transactions.

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the information required by this section, as applicable.[12]

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

(1) *Furnishing copy of credit document.* When an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, each transaction shall be sufficiently identified if the amount of the transaction, and either the date of the transaction or the date of debiting the transaction to the consumer's account are disclosed on the copy or on the periodic statement.

(2) *Not furnishing copy of credit document—creditor and seller same or related person(s).* When the creditor and the seller are the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction, and a brief identification[13] of the property or services purchased.[14]

(3) *Not furnishing copy of credit document—creditor and seller not same or related person(s).* When the creditor and seller are not the same person or related persons, and an actual copy of the receipt or other credit document is not provided with the periodic statement, the creditor shall disclose the amount and date of the transaction; the seller's name; and the city, and state or foreign country where the transaction took place.[15]

(b) *Nonsale credit.* For each nonsale credit transaction, the following rules shall apply:

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[9] See footnotes 6 and 8.

[10] See footnote 7 for additional disclosures required for a variable rate plan.

[11] See footnote 5.

[12] Failure to disclose the information required by this section shall not be deemed a failure to comply with the regulation if: (1) The creditor maintains procedures reasonably adapted to procure and provide the information; and (2) the creditor responds to and treats any inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 226.13(e)(1). The creditor must also furnish the consumer with documentary evidence of the transaction, whether or not the consumer requests it, free of charge and within the time period allowed for resolution under § 226.13. This provision applies to foreign transactions even if the creditor does not maintain procedures reasonably adapted to obtain the required information.

[13] Alternatively, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer if the number or symbol reasonably identifies that transaction with that creditor. If the creditor discloses a number or symbol and the consumer submits a notice of a billing error regarding the transaction, the creditor shall comply with § 226.13, including correcting the account in accordance with § 226.13(e)(1). The creditor shall also furnish the consumer with documentary evidence of the transaction, whether or not the consumer requests it, free of charge and within the time period allowed for resolution under § 226.13.

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

[15] The creditor may omit the address or provide any suitable designation that assists the consumer in identifying the transaction when no meaningful address is readily available because the transaction (1) took place at a location that is not fixed; (2) took place in the consumer's home; or (3) was the result of a mail or telephone order.

(1) *Furnishing copy of credit document.* When an actual copy of the credit document is provided with the first periodic statement reflecting the transaction, each transaction shall be sufficiently identified if the copy reflects the amount of the transaction, and either the date of the transaction, the date of debiting the transaction to the consumer's account, or, if the consumer signed the credit document, the date appearing on that document.

(2) *Description of transaction.* When an actual copy of the receipt or other credit document containing the information described in paragraph (b)(1) of this section is not provided with the first periodic statement reflecting the transaction, the creditor shall disclose a characterization of the transaction (as a cash advance, loan, overdraft loan, or other appropriate designation); the amount of the transaction; and the date of the transaction, the date of debiting the transaction, or, if the consumer signed the credit document, the date appearing on that document.

§ 226.9 Subsequent disclosure requirements.

(a) *Furnishing statement of billing rights*—(1) *Annual statement.* The creditor shall mail or deliver the billing rights statement required by § 226.6(d) during at least one billing cycle per calendar year, at intervals of not less than six months nor more than 18 months, to each consumer entitled to receive a periodic statement under § 226.5(b)(2) for that billing cycle.

(2) *Alternative summary statement.* As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement that is substantially similar to that in Appendix F.

(b) *Disclosures for supplemental credit devices and additional features.* (1) If a creditor, more than 30 days after mailing or delivering the initial disclosures, adds a credit feature to the consumer's account or mails or delivers to a consumer (other than as a renewal or resupply) any credit device, the creditor shall make the disclosures required by § 226.6(a).

(2) If the feature is added or the device is mailed or delivered within 30 days of the mailing or delivery of the initial disclosures, and the finance charge terms for the device or feature differ from those previously disclosed, the dislosures required by § 226.6(a) shall be given.

(3) The disclosures required in paragraphs (b) (1) and (2) of this section shall be made to the consumer before the consumer uses the feature or device for the first time.

(c) *Change in terms*—(1) *Written notice required.* (i) Except as provided elsewhere in this subsection, whenever any term required to be disclosed under § 226.6 is changed, the creditor shall mail or deliver to the consumer written notice of the change at least 15 days prior to the effective date of the change.

(ii) The 15-day timing requirement of this section does not apply when the change has been agreed to by the consumer, or when a periodic rate or other finance charge is increased as a result of the consumer's delinquency or default.

(2) *Notice not required.* No notice under this section is required when the change:

(i) Involves late payment charges, charges for documentary evidence, or over-the-limit charges;

(ii) Reduces any component of a finance or other charge;

(iii) Suspends future credit privileges or terminates an account or plan;

(iv) Results from the consumer's default or delinquency, unless the periodic rate of other finance charge is increased; or

(v) Results from an agreement involving a court proceeding.

(d) *Finance charge imposed at time of transaction.* (1) Any person honoring a consumer's credit card, other than the card issuer, who imposes a finance charge not excepted by § 226.4(f) shall, at the time of honoring a consumer's credit card, make the disclosures required under §§ 226.18 (b), (c), and (d). The annual percentage rate to be disclosed shall be determined by dividing the finance charge by the amount financed and multiplying the quotient (expressed as a percentage) by 12.

(2) The card issuer, if other than the person honoring the consumer's credit card shall have no responsibility for disclosures required by paragraph (d)(1) of this section and shall not separately consider any charge imposed under paragraph (d)(1) of this section for purposes of §§ 226.6 and 226.7.

§ 226.10 Prompt crediting of payments.

(a) *General rule.* A creditor shall credit a payment to the consumer's account as of the date of receipt.[16]

(b) *Specific requirements for payments.* A creditor may specify (on or with the periodic statement) reasonable requirements for the consumer to follow in making payments. If the creditor does so, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment promptly.

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

§ 226.11 Treatment of credit balances.

Whenever a creditor receives a payment or other credit that exceeds by more than $1 the new balance (as defined in § 226.7(j)) to which the payment or other credit is to be applied, the creditor shall:

(a)(1) Credit the consumer's account with an amount equal to the new balance, and within seven business days from receipt of the payment or other credit, refund the excess amount; or

(2) Credit the consumer's account with the total amount of the payment or other credit. If the consumer requests in writing a refund of any part of the credit balance, the creditor shall refund any such credit balance within seven business days from receipt of the consumer's request.

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

§ 226.12 Special credit card provisions.

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

(1) In response to an oral or written request or application [17] by a cardholder; [18] or

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[16] A payment need not be credited as of the date of receipt if a delay in crediting does not result in the imposition of a finance or other charge.

[17] This paragraph does not prohibit the issuance, on an unsolicited basis, of any device that may become a credit card provided that (1) the device has a substantive purpose other than obtaining credit, and (2) any credit capability is attached only upon the recipient's request.

[18] The card issuer may send cards to any cardholder(s) or authorized user(s) in accordance with the cardholder's request or application; provided, however, that an authorized user shall not be liable for unauthorized use of a credit card. The card issuer may send more than one credit card to a person if so requested, and may imprint on any card any name(s) requested. For purposes of this section, "authorized user" means a person to whom a credit card is issued upon the request or application of a

Footnotes continued on next page

(2) As a renewal of, or substitute for, an accepted credit card.[19]

(b) *Liability of cardholder for unauthorized use.*[20] (1) *Limitation on amount.* The liability of a cardholder for unauthorized use[21] of a credit card shall not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

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

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

(ii) The card issuer has provided, on the credit card or within two years preceding the unauthorized use, adequate notice[22] of the cardholder's maximum potential liability. The notice shall state that the cardholder's liability shall not exceed $50 (or any lesser amount); that the cardholder may give oral or written notification of loss, theft, or possible unauthorized use; and the address of the person or office to receive the notification;

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

(iv) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

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

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

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

(c) *Right of cardholder to assert claims or defenses against card issuer.* (1) *Limitations.* When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount. These rights apply, however, only if: (i) The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card;

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

(iii) The disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.

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

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

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

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

(iv) Controls the card issurer directly or indirectly;

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

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

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

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

(iii) Any other debts in the order of entry to the account. When more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

(4) *Types of transactions excluded.* This paragraph does not apply to the use of a credit card to obtain a cash advance unrelated to any specific credit sale item not to the use of a check guarantee card in connection with a check when there is no agreement between the card issuer and the merchant relating to honoring the card or the checks.

(5) *Adverse credit reports prohibited.* If, in accordance with this paragraph, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, and if the card issuer knows or has reason to know that the claim or defense has been asserted, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered. If the card issuer has reported an amount as delinquent and subsequently learns that a claim or defense has been asserted with respect to that amount, the card issuer shall, within one billing cycle after so learning, notify all credit bureaus and, to the extent possible, all other persons, to whom the card issuer has made a report, that the disputed amount is not delinquent. Nothing in this paragraph prohibits a card issuer from

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Footnotes continued from last page

cardholder for any purpose, including business, commercial, or agricultural use.

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

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

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

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

reporting the disputed amount or account as being in dispute.

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

(2) This paragaph does not alter or affect the right of a card issuer acting under state or federal law to do any of the following with regard to funds of a cardholder held deposit with the card issuer if the same procedure is constitutionally available to creditors generally: (i) Obtain or enforce a consensual security interest (limited to an agreed-upon amount) in the funds;

(ii) Attach or otherwise levy upon the funds; or

(iii) Obtain or enforce a court order relating to the funds.

(3) This paragraph does not prohibit the cardholder and the card issuer from agreeing in writing to a plan under which the card issuer may periodically deduct all or a portion of the cardholder's credit card debt from a deposit account with the card issuer (subject to the limitations in § 226.13(d)(5)).

(e) *Prompt notification of returns and crediting of refunds.* (1) When any creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's open-end credit card account, that creditor shall, within the seven business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) The card issuer shall, within three business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor must also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. Nothing in this section shall be construed to require refunds for returns or to prohibit refunds in kind.

(f) *Discounts; ti-in arrangements.* No card issuer may, by contract or otherwise: (1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer, its subsidiary, agent, or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) *Prohibition of surcharges.* No creditor in any sale transaction may impose a surcharge.[23] This paragraph shall cease to be effective on February 27, 1981.

(h) *Relation to Electronic Fund Transfer Act and Regulation E.*—(1) *Issuance.* The Truth in Lending Act and this regulation govern: (A) Issuance of credit cards;

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

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

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

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

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

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

(ii) The Electronic Fund Transfer Act and Regulation E govern a consumer's liability for an unauthorized electronic fund transfer that: (A) Is initiated by use of an access device that is also a credit card; or

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

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

§ 226.13 Billing error resolution.[24]

(a) *Definition of billing error.* For purposes of this section, the term "billing error" means: (1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan;

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§ 226.7(b) and 226.8;

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed;

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account;

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor;

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence;

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last address if the current address was furnished to the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

(b) *Billing error notice.*[25] A billing error notice is a written notice[26] from a

[23] "Surcharge" means any amount added at the point of sale to the regular price as a condition or consequence of payment being made by use of an open-end credit card account.

[24] A creditor shall not accelerate the consumer's entire debt or restrict or close a consumer's account solely because the consumer has exercised rights provided by this section.

[25] The creditor need not comply with the requirements of paragraphs (c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice.

[26] The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by § 226.6(d) and § 226.9(a).

consumer that: (1) Is received by a creditor at the address disclosed under § 226.7(1) no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

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

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) *Time for resolution; general procedures.* (1) Not later than 30 days after receiving a billing error notice, a creditor shall mail or deliver written acknowledgment of receipt to the consumer, unless it has complied with the appropriate resolution procedures required by paragraphs (e) and (f) of this section within the 30-day period; and

(2) Not later than the end of the second complete billing cycle (but in no event later than 90 days) after receiving a billing error notice, the creditor shall comply with the appropriate resolution procedures required by paragraphs (e) and (f) of this section.

(3) A creditor may make, without investigation, a final correction to a consumer's account in the amount or manner asserted by the consumer to be in error, but must comply with all other applicable requirements of this section.

(d) *Rules pending resolution.* Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply: (1) *Consumer's right to withhold disputed amount.* The consumer may withhold that portion of any required payment that the consumer believes is related to the disputed amount. If the disputed amount is only part of the total amount of an item or bill, the consumer remains obligated to pay the undisputed portion and any periodic payment on the undisputed portion. No additional finance or other charges may be imposed on the undisputed portion of the amount solely because the consumer withholds payment of the disputed amount.

(2) *Creditor's handling of disputed amount.* A creditor is not prohibited from: (i) Mailing or delivering a periodic statement that reflects a disputed amount and related finance or other charges, provided the creditor indicates on or with the periodic statement that payment of the disputed amount and related finance or other charges is not required pending the creditor's compliance with this section; or

(ii) Deducting any disputed amount and related finance or other charges from the maximum amount of credit available to the consumer.

(3) *Collection action prohibited.* The creditor shall not take any action to collect any part of the disputed amount or related finance or other charges. If the creditor or its agent inadvertently takes such action within three business days after receiving a billing error notice, the collection action is not a violation of this paragraph, provided: (i) The collection action occurred despite the maintenance of procedures reasonably adapted to ensure compliance with this paragraph; and

(ii) The creditor promptly ceases any further collection activity, and takes any reasonable action necessary to correct the collection action.

(4) *Adverse credit reports prohibited.* (i) The creditory shall not (directly or indirectly) make or threaten to make an adverse report to any person regarding the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges. If the creditor or its agent inadvertently takes such action within three business days after receiving a billing error notice, the action is not a violation of this paragraph, provided: (A) The action occurred despite the maintenance of procedures reasonably adapted to ensure compliance with this paragraph; and

(B) The creditor promptly notifies all credit bureaus and all other persons (to the extent possible), to whom the creditor has made a report, that the amount or account is not delinquent.

(ii) If the creditor receives a billing error notice after adversely reporting about an amount or account, the creditor shall notify all credit bureaus and all other persons (to the extent possible) to whom the creditor has made a report that the amount or account is not delinquent, within one billing cycle after receiving the billing error notice.

(5) *Automatic debit of disputed amounts.* If a cardholder participates in an automatic payment paln, by maintaining an account with a card issuer that is authorized to deduct periodically an agreed upon amount from the account to pay the credit card indebtedness, and the card issuer receives a billing error notice any time up to three business days before the automatic-debit date, the card issuer shall not debit any part of the disputed amount or related finance or other charges.

(e) *Procedures after creditor determines that billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall promptly but no later than the time limits in paragraph (c)(2) of this section,

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver to the consumer a separate notice of the correction, or specifically identify the correction on or with a periodic statement that is mailed within the time limits in paragraph (c)(2) of this section.

(f) *Procedures after creditor determines different billing error or no billing error occurred.* If, after conducting a reasonable investigation,[27] a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall, promptly but no later than the time limits in paragraph (c)(2) of this section,

(1) Mail or deliver to the consumer an explanation (either separately or with a periodic statement) that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of ducumentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of this section, determines that a consumer still owes all or part of a disputed amount and related finance or other charges, the creditor: (1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount that the consumer still owes, which may include minimum periodic payments that accrued during the error resolution period;

(2) Shall allow the time period disclosed under §§ 226.6(a)(1) and 226.7(k) or 10 days (whichever is longer), during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges, if the creditor customarily allows such a time period in undisputed transactions;

(3) May report an account or amount as delinquent because a disputed

[27] If a consumer submits a billing error notice alleging the non-delivery of property or services under paragraph (a)(3) of this section or that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card has made an incorrect report to the card issuer, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered as agreed or that the information was correct.

amount and related finance or other charges remain unpaid: *Provided,* The creditor has allowed the time period disclosed under §§ 226.6(a)(1) and 226.7(k) or 10 days (whichever is longer), during which the consumer can pay the amount due under paragraph (g)(1) of this section; but

(4) May not report that an amount or account is delinquent because the disputed amount and related finance or other charges remain unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also: (i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports the subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

(h) *Reassertion of billing error.* A creditor that has fully complied with the requirements of this section has no further responsibilities under this section, if a consumer reasserts (other than as provided in paragraph (g)(4) of this section) substantially the same billing error.

(i) *Forfeiture penalty.*[28] (1) Any creditor that fails to comply with the requirements of this section forfeits any right to collect the disputed amount and related finance or other charges from a consumer even if no billing error occurred, however, the forfeited amount shall not exceed $50 for each asserted billing error.

(2) A creditor shall not forfeit more than once for each asserted billing error, nor shall a creditor forfeit any amount for an error in a total or subtotal figure (on a periodic statement) solely because a billing error is a component of the total or subtotal figure.

(k) *Relation to Electronic Fund Transfer Act and regulations.* If an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor shall comply with the requirements of Regulation E § 205.11 (12 CFR Part 205) governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section.

§ 226.14 Determination of annual percentage rate.

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than 1/8th of 1 percentage point above or below the annual percentage rate determined in accordance with this section.

(b) *Annual percentage rate for initial disclosures and for advertising purposes.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate to be disclosed for purposes of § 226.6(a)(2) before opening an account and for advertising purposes under § 226.16 shall be computed by multiplying each periodic rate by the number of periods in a year.

(c) *Annual percentage rate for periodic statements.* The annual percentage rate to be disclosed for purposes of § 226.7(d) shall be computed by multiplying each periodic rate by the number of periods in a year and, for purposes of § 226.7(h), shall be determined as follows: (1) Where the finance charge is determined solely by applying one or more periodic rates, the annual percentage rate shall be determined, at the creditor's option, either: (i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2)(i) Except as provided in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section, where the finance charge imposed during the billing cycle includes a minimum, fixed, or other charge not due to the application of a periodic rate, the annual percentage rate shall be determined by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable[29] and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(ii) Where the finance charge imposed during the billing cycle includes a charge relating to a specific transaction, the annual percentage rate shall be determined by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and by multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year,[30] except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.

(iii) Where the finance charge imposed during the billing cycle includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the annual percentage rate may be determined, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) (i) and (ii) of this section.

(d) *Calculations where daily periodic rate applied.* In any open-end credit account to which the provisions of paragraphs (c)(1)(ii) or (c)(2)(i) of this section apply where all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either: (1) By dividing the total finance charge by the average of daily balances and multiplying the quotient by the number of billing cycles in a year; or (2) by dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

(e) *Errors in calculation tools.* (1) An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this regulation if: (i) The error resulted from a corresponding error in any calculation tool used in good faith by the creditor; and

(ii) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes, and notifies the Board in writing of the error in the calculation tool.

(2) This paragraph shall cease to be effective on April 1, 1982.

§ 226.15 Right of rescission.

(a) *Consumer's right to rescind.*[31] (1) In an open-end credit plan in which a security interest is or will be retained or

[28] Nothing in this paragraph limits a consumer's right to recover under § 130 of the act.

[29] If there is no balance to which the finance charge is applicable, and annual percentage rate cannot be determined under this section. (See also § 226.7(h).)

[30] See Appendix E regarding determining the denominator of the fraction under this paragraph.

[31] The right to rescind does not apply to an open-end credit plan in which a federal or state agency is the creditor.

acquired in a consumer's principal dwelling, each consumer whose ownership interest is subject to the security interest shall have the right to rescind, at the creditor's option, Rither: (i) Each transaction made under the plan; or

(ii) The plan when the plan is opened; a security interest when added or increased to secure an existing open-end plan; and the increase when the credit limit on the plan is increased.[32]

(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other written means of communication. Notice is considered given when mailed, when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in paragraph (a)(1) of this section that gave rise to the right of rescission, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures,[33] whichever is last. If the required notice and material disclosures are not delivered, the right to rescind shall expire three years after the occurrence giving rise to the right of rescission or upon transfer of all of the consumer's interest in the property, whichever is earlier. In the case of certain administrative proceedings, the rescission period will be extended by one year in accordance with § 125(f) of the act.

(4) When more than one consumer has the right to rescind, the exercise of the right by any one of these consumers shall be effective as to all consumers.

(b) *Notice of right to rescind.* In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following: (1) The retention or acquisition of a security interest in the consumer's principal dwelling;

[32] This option shall only be available until March 31, 1985. After that time, the consumer shall have the right to rescind each subsequent advance made under an open-end credit plan secured by the consumer's principal dwelling.

[33] For purposes of this section, the term "material disclosures" means the information that must be provided to satisfy the requirements in § 226.6 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, and the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan.

(2) the consumer's right to rescind as described in paragraph (a)(1) of this section;

(3) The way to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business;

(4) the effects of rescission, as described in paragraph (d) of this section; and

(5) The date the rescission period expires.

(c) *Delay of creditor's performance.* Unless a consumer waives the right to rescind under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services performed, and no materials delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. A creditor does not violate this section if a third party with no knowledge of the event activating the right of rescission provides materials or services to the consumer within this period, as long as no security interest in the property subject to rescission is taken by the creditor to secure debts incurred by the consumer during the rescission period.

(d) *Effects of rescission.* (1)(i) When a consumer rescinds an individual transaction, the security interest giving rise to the right of rescission becomes void. A consumer who rescinds a transaction shall not be liable for any amounts, including any finance charge, related to the credit extension.

(ii) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property given to any party by the consumer in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(iii) If the creditor has delivered any money or property, the consumer may keep it until the creditor has met its obligations under paragraph (d)(1)(ii) of this section. When the creditor has done so, the consumer shall tender the money or property to the creditor, or, when the latter would be impracticable or inequitable, the consumer shall tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. If the creditor does not take the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(iv) The prodecures outlined in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section may be modified by court order.

(2) a consumer who rescinds under paragraph (a)(1)(ii) of this section shall not be liable for any amounts related to the particular occurrence activating the right of rescission, and the security interest giving rise to the right of rescission shall be void. Within 20 calendar days after receipt of a rescission notice, the creditor shall return any such amounts given to any party by the consumer and shall take any action necessary to reflect the termination of the security interest. This paragraph does not affect the validity of the consumer's underlying obligations with regard to individual transactions made on the account with third parties during the rescission period.

(e) *Consumer's waiver of right to rescind.* The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, that specifically modifies or waives the right to rescind, and that bears the signatures of the consumers entitled to rescind. Printed forms are prohibited.

§ 226.16 Advertising.

(a) *Actually available terms.* If an advertisement for open-end credit states specific credit terms, it shall state only those terms that the creditor actually arranges or offers.

(b) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under § 226.6 is set forth in or determinable from an advertisement, the advertisement shall also clearly and conspicuously set forth: (1) Any minimum, fixed, transaction, membership, participation, activity or similar charge that could be imposed; and

(2) Any periodic rate that could be applied, expressed as a corresponding annual percentage rate as determined under § 226.14(b).

(c) *Catalogs and multiple-page advertisements.* (1) If a catalog or other multiple-page advertisement gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if: (i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to that page on which the table or schedule begins.

(2) A catalog or multiple-page advertisement complies with this paragraph if the table or schedule of

terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Subpart C—Closed-End Credit

§ 226.17 General disclosure requirements.

(a) *Time of disclosures.* Disclosures shall be made before consummation of the transaction. In certain residential mortgage transactions, however, special timing requirements are set forth in § 226.19. In certain transactions involving mail or telephone orders or a series of sales, the timing of the disclosures may be delayed in accordance with paragraphs (f) and (g) of this section.

(b) *Form of disclosures.* (1) The disclosures shall be made clearly and conspicuously in writing in a form that the consumer may keep, either on the credit contract or on a separate document. The disclosures shall be grouped together beginning on the front of the document, shall be segregated from everything else, and shall not contain any other information not directly related [34] to the disclosures required under § 226.18.[35] The explanation of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under that section.

(2) Where the words "finance charge" and "annual percentage rate" are required to be disclosed in § 226.18(d) and (e) together with a corresponding amount or percentage rate, those words shall be more conspicuous than any other disclosure required by this regulation. Information relating to the creditor's identity is not governed by this rule.

(c) *Basis of disclosures and use of estimates.* (1) The creditor shall base the disclosures on the information known to it at the time it makes the disclosures. The disclosures shall be based on the assumption that the consumer will comply with the terms of the legally enforceable obligation between the parties.

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

(3) The creditor may disregard the effects of the following in making all calculations and required disclosures: (i) That payments must be collected in whole cents;

(ii) That dates of scheduled payments and advances may be changed because the scheduled date is not a business day;

(iii) That months have different numbers of days; and

(iv) The occurrence of leap year.

(4) The creditor may treat the following irregular first periods as if they were regular, and may disregard an irregular final payment (or portion of a final payment) that results from the irregular first period: [36]

(i) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period;

(ii) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period; and

(iii) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(5) When an obligation is payable on demand, the creditor shall make the disclosures based on an assumed maturity of 1 year. When there is a legally enforceable alternate maturity date, the disclosures shall be based on that date.

(6)(i) A single obligation shall not be disclosed as two or more transactions; two or more obligations shall not be disclosed as a single transaction.

(ii) When a series of advances may be made under an agreement to extend credit up to a certain amount, the series may be considered as one transaction.

(iii) When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as one transaction or as two transactions.

(d) *Multiple creditors; multiple consumers.* When a transaction involves more than one creditor, only one creditor need make all of the disclosures and only one complete set of disclosures shall be given. When there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation. When a transaction is rescindable under § 226.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) *Effect of subsequent events.* (1) When a disclosure is rendered inaccurate as a result of an event that occurs after the delivery of the disclosures, the resulting inaccuracy is not a violation of this regulation.

(2) In certain residential mortgage transactions, the creditor shall disclose the changed term, as described in § 226.19.

(3) When the event occurs after consummation, the determination of whether new disclosures are required is governed by § 226.20.

(f) *Mail or telephone orders—delay in disclosures.* (1) If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or any other written or electronic communication without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment. This delay is permitted only if the following information describing representative amounts or ranges of credit is made available in written form to the consumer or to the public before the actual purchase order or request: (i) The cash price or the principal loan amount. (ii) The total sale price. (iii) The finance charge. (iv) The annual percentage rate. (v) The terms of repayment.

(2) If the information specified in paragraph (f)(1) of this section is not available in the prescribed manner, the disclosures must be made before consummation of the transaction.

(g) *Series of sales—delay in disclosures.* If a credit sale is one of a series made under an agreement providing that subsequent sales can be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale. This delay is permitted only if the following two conditions are met: (1) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(2) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For the purpose of this provision, in the

[34] The disclosures may include an acknowledgement of receipt and the consumer's name and account number.

[35] The following disclosures may be made together or separately from any other required disclosures: The creditor's identity under § 226.18(a), insurance charges under § 226.18(n) and itemized charges under § 226.18(o).

[36] For purposes of paragraph (c)(4) of this section, the "first period" is the period from the date on which the finance charge begins to be earned to the date of the first payment; the "term" is the period from the date on which the finance charge begins to be earned to the date of the final payment, and the "regular period" is the most common interval between payments in the transaction. In transactions involving regular periods that are monthly, semimonthly, or multiples of a month, the length of the irregular and regular periods may be calculated on the basis of either the actual number of elapsed days or an assumed 30-day month. In other transactions, the length of the periods shall be based on the actual number of days.

case of items purchased on different dates, the first purchased shall be deemed the first paid for; in the case of items purchased on the same date, the lowest priced shall be deemed the first paid for.

§ 226.18 Content of disclosures.

For each transaction,[37] the creditor shall disclose the following information, as applicable: (a) *Creditor.* The identity of the creditor making the disclosures.

(b) *Amount financed.* The "amount financed," using that term, and a brief description such as "the amount of credit provided to you or on your behalf." The amount financed is calculated by: (1) Determining the principal loan amount (excluding any finance charge) or the cash price (excluding any downpayment);

(2) Adding any other amounts financed by the consumer and not part of the finance charge; and

(3) Subtracting any prepaid finance charge.

(c) *Explanation of amount financed.*[38] (1) A written explanation of the amount financed, consisting of: (i) The prepaid finance charge.

(ii) The amount of any proceeds distributed directly to the consumer.

(iii) The amount credited to the consumer's account with the creditor.

(iv) Any amounts paid to other persons by the creditor on the consumer's behalf, other than amounts included in paragraph (c)(1)(i) of this section. The creditor shall identify those persons.[39]

(2) The creditor need not comply with paragraph (c)(1) of this section if the creditor provides a statement that the consumer has the right to receive a written explanation of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.

(d) *Finance charge.* The "finance charge," using that term, and a brief description such as "the dollar amount the credit will cost you."

(e) *Annual percentage rate.*[40] The "annual percentage rate," using that term, and a brief description such as "the cost of your credit as a yearly rate."

(f) *Variable rate.* If the annual percentage rate may increase, the following disclosures: (1) The circumstances under which the annual percentage rate may increase (including identification of any index to which the rate is tied);

(2) The limitations, if any, on the increase, which need not be expressed as an annual percentage rate;

(3) The manner in which any increase would occur, such as an increase in the number or amount of payments; and

(4) In a residential mortgage transaction, an example of the payment terms that would result from an increase imposed in accordance with the disclosures made under this paragraph.

(g) *Payment schedule.* The number, amounts,[41] and timing of payments scheduled to repay the obligation.

(h) *Total of payments.* The "total of payments," using that term, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments."[42]

(i) *Demand features.* When the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of 1 year as provided in § 226.17(c)(5), that assumption shall also be disclosed.

(j) *Total sale price.* In a credit sale, the "total sale price," using that term, and a descriptive explanation (including the amount of any downpayment) such as "the total price of your purchase on credit, including your downpayment of $———." The total sale price is the sum of the cash price, the items described in paragraph (b)(2) and the finance charge disclosed under paragraph (d) of this section.

(k) *Prepayment.* (1) When an obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full, whether voluntarily or not.

(2) A statement indicating whether or not the consumer must pay the entire finance charge if the obligation is prepaid in full, whether voluntarily or not.

(l) *Late payment.* Any dollar or percentage charge that maybe imposed before maturity due to a late payment, other than a deferral or extension charge.

(m) *Security interest.* The fact that the creditor has or will acquire a security interest either in the property purchased as part of the transaction, or in other property identified by item or type.

(n) *Insurance charges.* The items required by § 226.4(d) in order to exclude certain insurance premiums from the finance charge.

(o) *Excludable charges.* The disclosure required by § 226.4(e) in order to exclude certain charges from the finance charge.

(p) *Contract reference.* A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor's policy regarding assumption of the obligation.

(q) *Assumption policy.* In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.[43]

§ 226.19 Certain residential mortgage transactions.

(a) *Time of disclosure.* In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (Title 12, §§ 2601 through 2617 of the United States Code), the disclosures required by § 226.18 shall be made before consummation or shall be delivered or placed in the mail not later than 3 business days after the creditor receives the consumer's written application, whichever is earlier. The creditor shall make good faith estimates of the required disclosures.

[37] For each transaction under a student credit guarantee program involving an extension of credit without a set repayment schedule, the creditor need not disclose the finance charge under paragraph (d), the payment schedule under paragraph (g), the total of payments under paragraph (h) or the total sale price under paragraph (j) of this section. Before the final obligation or repayment schedule is agreed upon, the creditor shall make all applicable disclosures, except for the total sale price under paragraph (j) of this section.

[38] Transactions subject to the Real Estate Settlement Procedures Act (Title 12, §§ 2601 through 2617 of the United States Code) may comply with paragraph (c) of this section by combining the disclosures required by that paragraph with the good faith estimate of settlement costs required by that act. See § G(4) of Appendix G for a model form which may be used for this purpose.

[39] Public officials or governmental agencies may be described using those or similar terms and need not be further identified.

[40] For any transaction involving a finance charge of $5 or less on an amount financed of $75 or less, or a finance charge of $7.50 or less on an amount financed of more than $75, the creditor need not disclose the annual percentage rate.

[41] If the amount of any payment in a series is not more than five percent larger than the smallest payment in that series, the creditor may treat all payments in the series as equal by disclosing the largest payment amount, labeled as an estimate. This rule governs only the disclosure of payment amounts; it does not affect the disclosure of the finance charge under paragraph (d) of this section or the determination of the annual percentage rate under § 226.22.

[42] For any transaction involving a single payment, the creditor need not disclose the total of payments.

[43] If a creditor requires a subsequent purchaser to pay an assumption fee or similar charge, the assumption is not considered to be on terms differing from the original ones. However, a change in the interest rate originally imposed is considered a different term.

(b) *Redisclosure required.* If the annual percentage rate in the consummated transaction is more than ⅛ of 1 percentage point above or below the annual percentage rate disclosed under § 226.18(e), the changed terms shall be disclosed no later than consummation. In irregular transactions, the changed terms shall be disclosed no later than consummation if the annual percentage rate in the consummated transaction is more than ¼ of 1 percentage point above or below the annual percentage rate disclosed under § 226.18(e).

§ 226.20 Subsequent disclosure requirements.

(a) *Refinancings.* A refinancing occurs when an existing obligation that was subject to this section is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The creditor shall include in the new finance charge any unearned portion of the old finance charge that is not credited to the existing obligation.

(b) *Assumptions.* An assumption occurs when a creditor expressly agrees in writing with a subsequent consumer to accept that consumer as a primary obligor on an existing residential mortgage transaction. The creditor shall make new disclosures based on the remaining obligation to the subsequent consumer before the assumption occurs.

§ 226.21 Treatment of credit balances.

Whenever a credit balance in excess of $1 is credited in connection with a transaction through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of a consumer, the creditor shall:

(a) Credit the amount of the credit balance to the consumer's account;

(b) Refund any part of the amount of the remaining credit balance, upon request of the consumer; and

(c) Make a good faith effort to refund to the consumer by cash, check, or money order any part of the amount of the credit balance remaining in the account for more than 6 months, except that no further action is required if the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number.

§ 226.22 Determination of annual percentage rate.

(a) *Accuracy of annual percentage rate.* (1) The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, which relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in Supplement I of this regulation (§ 226.40).

(2) As a general rule, the annual percentage rate will be considered accurate if it is not more than ⅛ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.

(3) In an irregular transaction, the annual percentage rate shall be considered accurate if it is not more than ¼ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.[44]

(b) *Computation tools.* (1) The Regulation Z Annual Percentage Rate Tables produced by the Board may be used to determine the annual percentage rate, and any rate determined from those tables in accordance with the accompanying instructions complies with the requirements of this section. Volume I of the tables applies to single advance transactions involving up to 480 monthly payments or 104 weekly payments. It may be used for regular transactions and for transactions with any of the following irregularities: An irregular first period, an irregular first payment, and an irregular final payment. Volume II of the tables applies to transactions involving multiple advances and any type of payment or period irregularity.

(2) Creditors may use any other computation tool in determining the annual percentage rate if the annual percentage rate so determined equals the annual percentage rate determined in accordance with Supplement I, within the degree of accuracy set forth in paragraph (a) of this section.

(c) *Single add-on rate transactions.* If a single add-on rate is applied to all transactions with maturities up to 60 months and if all payments are equal in amount and period, a single annual percentage rate may be disclosed for all those transactions, so long as it is the highest annual percentage rate for any such transaction.

(d) *Certain transactions involving ranges of balances.* For purposes of disclosing the annual percentage rate referred to in §§ 226.17(f)(1)(iv) (Mail or telephone orders—delay in disclosures) and 226.17(g)(Series of sales—delay in disclosures), if the same finance charge is imposed on all balances within a specified range of balances, the annual percentage rate computed for the median balance may be disclosed for all the balances. However, if the annual percentage rate computed for the median balance understates the annual percentage rate computed for the lowest balance by more than 8 percent of the latter rate, the annual percentage rate shall be computed on whatever lower balance will produce an annual percentage rate that does not result in an understatement of more than 8 percent of the rate determined on the lowest balance.

(e) *Payment schedule irregularities.* [45] In determining and disclosing the annual percentage rate, a creditor may disregard an irregularity in the first period that falls within the limits described below and any payment schedule irregularity that results from the irregular first period:

(1) For transactions in which the term is less than 1 year, a first period not more than 6 days shorter or 13 days longer than a regular period.

(2) For transactions in which the term is at least 1 year and less than 10 years, a first period not more than 11 days shorter or 21 days longer than a regular period.

(3) For transactions in which the term is at least 10 years, a first period shorter than or not more than 32 days longer than a regular period.

(f) *Errors in calculation tools.* (1) An error in disclosure of the annual percentage rate or finance charge shall not by itself be considered a violation of this regulation if:

(i) The error resulted from a corresponding error in any calculation tool used in good faith by the creditor; and

[44] For purposes of paragraph (a)(3) of this section, an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods or irregular payment amounts.

[45] For purposes of paragraph (e) of this section, the "first period" is the period from the date on which the finance charge begins to be earned to the date of the first payment; the "term" is the period from the date on which the finance charge begins to be earned to the date of the final payment; and the "regular period" is the most common interval between payments in the transaction. In transactions involving regular periods that are monthly, semimonthly, or multiples of a month, the length of the irregular and regular periods may be calculated on the basis of either the actual number of elapsed days or an assumed 30-day month. In all other transactions, the length of the periods shall be based on the actual number of elapsed days.

(ii) Upon discovery of the error, the creditor promptly discontinues use of that calculation tool for disclosure purposes and notifies the Board in writing of the error in the calulation tool.

(2) This paragraph shall cease to be effective on April 1, 1982.

§ 226.23 Right of rescission.

(a) *Consumer's right to rescind.* (1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except the transactions described in paragraph (f) of this section.[46]

(2) To exercise the right to rescind, the consumer shall notify the creditor of the recission by mail, telegram or other written means of communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when deliverd to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, whichever is last.[47] If the required notice or material disclosures are not delivered, the right to rescind will expire 3 years after consummation or upon transfer of all of the consumer's interest in the property, whichever is earlier. In the case of certain administrative proceedings, the rescission period will be extended by 1 year in accordance with section 125(f) of the act.

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by any one of those consumers shall be effective as to all consumers.

(b) *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver 2 copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind the transaction.

(3) The way to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission as described in paragraph (d) of this section.

(5) The date of expiration of the rescission period.

(c) *Delay of creditor's performance.* Unless a consumer waives the right of recission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d) *Effects of rescission.* (1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void. A consumer who rescinds a transaction shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may keep it until the creditor has met its obligations under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, pay its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. If the creditor does not take the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (d)(3) of this section may be modified by court order.

(3) *Consumer's waiver of right to rescind.* The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind and bears the signatures of all of the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) *Exempted transactions.* The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. If the new amount financed exceeds the unpaid principal balance plus any earned unpaid finance charge on the existing debt, this exemption applies only to the existing debt and its security interest.

(3) A transaction in which a federal or state agency is a creditor.

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under § 226.17(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

§ 226.24 Advertising.

(a) *Actually available terms.* If an advertisement for consumer credit states specific credit terms, it shall state only those terms that the creditor actually arranges or offers.

(b) *Advertisement of rate of finance charge.* If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicouously than, the annual percentage rate.

(c) *Advertisement of terms that trigger additional disclosures.* (1) If any of the following terms is set forth in or otherwise determinable from an advertisement, the advertisement shall meet the requirements of paragraph (c)(2) of this section:

(i) The amount or percentage of any downpayment.

(ii) The number of payments or period of repayment.

(iii) The amount of any payment.

(iv) The amount of any finance charge.

(2) An advertisement stating any of the terms in paragraph (c)(1) of this

[46] For the purpose of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor must deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice will trigger the rescission period.

[47] "Material disclosures" means the required disclosure of the annual percentage rate, the finance charge, the amount financed, the total of payments and the number, amount and timing of payments scheduled to repay the obligation.

section shall state the following terms,[48] as applicable:

(i) The amount or percentage of the downpayment.

(ii) The terms of repayment.

(iii) The "annual percentage rate," using that terms, and, if the rate may be increased after consummation, that fact.

(d) *Catalogs and multiple-page advertisements.* (1) If a catalog or other multiple-page advertisement gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragrpah (c)(2) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly set forth; and

(ii) Any statement of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page on which the table or schedule begins.

(2) A catalog or multiple-page advertisement complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Subpart D—Consumer Leasing

§ 226.25 Definitions.

(a) Definitions that apply to the entire regulation are located in § 226.2.

(b) The following definitions apply solely to consumer leasing:

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

"Consumer lease" means an obligation in the form of a bailment or lease for the use of personal property by a consumer primarily for personal, family, or household purposes, for an original term of more than 4 months, for a total lease obligation not exceeding $25,000, whether or not the consumer has the option to purchase or otherwise become the owner of the property at the end of the lease term. A lease that meets the definition of a "credit sale" is not a consumer lease for purposes of this definition.

"Lessor" means a person who more than 25 times in a year leases or arranges for a lease.

[48] An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used in complying with this requirement.

"Realized value" means:

(1) The price received by the lessor for the leased property at disposition;

(2) The highest offer for disposition; or

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

"Total lease obligation" means the sum of:

(1) The scheduled periodic payments under the lease;

(2) Any nonrefundable cash payment required of the consumer or agreed upon by the lessor and consumer or any trade-in allowance made at consummation; and

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

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

§ 226.26 Disclosures.

(a) *Time and form of disclosures.* (1) The lessor shall make the disclosures before consummation of the transaction.

(2) The discolusres shall be made clearly and conspicuously in a dated written form that the consumer may keep, either on the lease contract or on a separate document. The document may, but need not, include an acknowledgement of receipt.

(b) *Basis of disclosures and use of estimates.* (1) The lessor shall base the disclosures on the information known to it at the time disclosures are made. The disclosures shall be based on the assumption that the consumer will comply with the terms of the legally enforceable obligation between the parties.

(2)(i) When any information necessary to make an accurate disclosure is unknown to the lessor, it shall make the disclosure based on the best information reasonably available to it and shall state that the disclosure is an estimate.

(ii) In a purchase option lease, a lessor may understate the estimated value of the leased property when it computes the total lease obligation required in paragraph (f)(2)(i) of this section.

(3) The lessor may disregard the effects of the following in making all calculations and required disclosures:

(i) That payments must be collected in whole cents;

(ii) That dates of scheduled lease payments may be changed because the scheduled date is not a business day;

(iii) That months have different numbers of days; and

(iv) The occurrence of leap year.

(c) *Multiple lessors; multiple consumers.* When a lease involves more than one lessor, only one lessor need make all the disclosures, and only one complete set of disclosures need be given. When there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the lease.

(d) *Effect of subsequent events.* If a disclosure is rendered inaccurate as a result of an event that occurs after delivery of the disclosures, the resulting inaccuracy is not a violation of this regulation. When the event occurs after consummation, the lessor shall refer to paragraph (g) of this section to determine whether new disclosures are required.

(e) *Content of disclosures.* Each consumer lease shall disclose the following information, as applicable:

(1) *Consumer.* The identity of the consumer receiving the disclosures.

(2) *Lessor.* The identity of the lessor making the disclosures.

(3) *Leased property.* A brief description of the leased property that sufficiently identifies it.

(4) *Initial payments.* A brief description of every payment made or to be made by the consumer either at or prior to delivery of the leased property, and the total amount of all such payments.

(5) *Periodic payments.* The number, amounts, and timing of periodic lease payments, and the total amount of such payments.[49]

(6) *Official charges.* The total amount of charges payable by the consumer during the lease term for official fees, registration, certificate of title, licenses, or taxes. The lessor may omit the charges that are disclosed under paragraphs (e)(4) and (e)(5) of this section.

(7) *Other charges.* All other charges that are payable by the consumer to the lessor but not included in the periodic lease payments, individually itemized, and the total of such charges. The lessor may omit the charges that are disclosed under paragraphs (e)(4), (e)(5), and (e)(6) of this section.

(8) *Insurance.* A brief description of the types and amounts of insurance that are required by, paid by, or obtained from the lessor, other than insurance procured by the lessor for its own benefit. If the insurance is obtained from or paid by the lessor, the description shall include the cost to the consumer.

[49] If the amount of any payment in a series is not more than 5 percent larger than the smallest payment in that series, the lessor may treat all payments in the series as equal by disclosing the largest payment amount, labeled as an estimate.

(9) *Warranties.* A statement identifying any express warranties or guarantees that are made by the lessor or manufacturer and are available to the consumer.

(10) *Maintenance.* A statement identifying the person responsible for maintaining or servicing the leased property and a brief description of the responsibilities.

(11) *Wear and use standards.* A statement of reasonable standards for wear and use, if the lessor sets such standards.

(12) *Security interest.* A statement that the lessor has taken or will take a security interest in connection with the lease (other than a security deposit disclosed under paragraph (e)(4) of this section) and a brief description of the property to which it relates.

(13) *Default charges.* The amount (or method of determining the amount) of any penalty or other charge, other than a deferral or extension charge, for default, delinquency, or late payments.

(14) *Purchase option.* A statement of whether or not the consumer has the option to purchase the leased property and, if applicable, the option times and prices or the method of determining the prices.

(15) *Early termination.* A statement of the conditions under which the consumer or the lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

(f) *Special disclosures concerning consumer's liability on termination of lease.* (1) When the consumer's liability at early termination is affected by the realized value of the leased property, or when the consumer's liability at the end of the lease term is based on the estimated value of the leased property, in addition to the disclosures under paragraph (e) of this section, the lessor shall disclose the following information, as applicable:

(i) A statement explaining the effect of the realized value of the leased property on the consumer's liability at early termination, or a statement that the consumer shall be liable for the difference between the estimated value of the leased property and its realized value at the end of the lease term; and

(ii) A statement that the consumer may obtain, at the consumer's expense, a professional appraisal of the value which could be realized at sale of the leased property. The statement shall indicate that the appraisal must be made by an independent third party agreed to by the consumer and the lessor, and that such an appraisal is final and binding on both parties.

(2) When the consumer's liability at the end of the lease term is based on the estimated value of the leased property, the following items shall be disclosed:

(i) The value of the property at consummation of the lease, the itemized total lease obligation, and the difference between them;

(ii) A statement that the estimated value of the leased property is presumed to be unreasonable, and not in good faith, to the extent that it exceeds the realized value by more than three times the average lease payment allocable to a monthly period, and a statement that the lessor cannot collect the excess amount unless it rebuts the presumption of unreasonableness in a successful court action in which it pays the consumer's attorney's fees;

(iii) A statement that the rules concerning presumption and attorney's fees do not apply to the extent that the excess of estimated value over realized value is due to unreasonable wear or use, or to excessive use; and

(iv) A statement that the requirements of paragraph (f)2)(ii) of this section do not preclude the right of a willing consumer to enter into any mutually agreeable final adjustment regarding excess liability, provided such agreement is reached after the end of the lease term.

(g) *Renegotiation requiring new disclosures.* A renegotiation occurs when an existing lease is satisfied and replaced by a new consumer lease undertaken by the same consumer. A renegotiation is a new lease requiring new disclosures to the consumer. The subsitution or addition of one or more items in a multiple-item lease is not a renegotiation if the average lease payment allocable to a monthly period is not changed by more than 25 percent.

(h) *Extensions.* (1) A lessor that extends or permits a consumer to extend the duration of a consumer lease for one month or less shall comply with § 183(a) of the act, and calculate the consumer's liability on the basis of the estimated value of the leased property disclosed under paragraph (f) of this section.

(2) A lessor that extends or permits a consumer to extend the duration of a lease for more than one month shall:

(i) Comply with § 183(a) of the act and, when the leased property is returned, reduce the estimated value of the leased property that was disclosed under paragraph (f) by an amount that reflects the depreciation resulting from the extension;[50] or

(ii) Treat the extension as a renegotiation under paragraph (g).

§ 226.27 Advertising.

(a) *Actually available terms.* If an advertisement states specific consumer lease terms, it shall state only those terms that the lessor actually arranges or offers.

(b) *Advertisement of terms that require additional disclosures.* Except as provided in paragraph (c) of this section, if an advertisement states the amount of any payment, the number of required payments, or whether or not any payment is required to be made at consummation of the lease, it shall also state, by using one or more examples of typical consumer leases, the following information:

(1) That the transaction advertised is a lease;

(2) The total amount of any payment required to be made at or prior to delivery of the leased property, or that no such payment is required;

(3) The number, amounts, and timing of periodic lease payments and the total of such payments;

(4) Whether or not the consumer has the option to purchase the leased property; and, if applicable, the option times and prices or the method of determining the prices; and

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes on the consumer at the end of the lease term, including a statement that the consumer shall be liable for any difference between the estimated value of the property and its realized value at the end of the lease term, if such liability exists.

(c) *Multiple-item leases; merchandise tags.* A merchandise tag for an item normally included in a multiple-item lease need not comply with paragraph (b) of this section if it refers to a sign or display, posted in the lessor's showroom, that contains a table or schedule of the items required to be disclosed under paragraph (b) of this section.

(d) *Catalogs and multiple-page advertisements.* (1) If a catalog or other multiple-page advertisement provides information in a table or schedule of lease terms in sufficient detail to permit determination of the disclosures required by this section, it shall be considered a single advertisement, provided:

(i) The table or schedule is clearly set forth; and

[50] The lessor may, but need not, use the following simple method to determine the reduced estimated value. Assuming that a portion of each periodic payment reflects the depreciation of the property that correlates with the original estimated value, the lessor may subtract the depreciation portion of each periodic payment made during the extension from the original estimated value.

(ii) Any statement of lease terms appearing elsewhere in the catalog or advertisement clearly refers to the page on which the table or schedule begins.

(2) A catalog or multiple-page advertisement complies with paragraph (b) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly leased higher priced property offered.

Subpart E—Miscellaneous

§ 226.28 Record retention.

(a) *General rule.* A creditor or lessor shall retain evidence of compliance with this regulation, including information sufficient to reconstruct the required disclosures, for a period of two years after the date the disclosures are required to be made. The administrative agencies responsible for enforcing the regulation may require creditors and lessors under their jurisdiction to retain records for a longer period where necessary to carry out their enforcement responsibilities under section 108 of the act.

(b) *Recordkeeping methods.* Evidence of compliance may be retained by use of microfilm, microfiche, or any other method designed to reproduce records accurately.

(c) *Inspection of records.* A creditor or lessor shall permit the agency responsible for enforcing this regulation with respect to that creditor or lessor to inspect its relevant records for compliance.

§ 226.29 Use of annual percentage rate in oral disclosures.

In an oral response to an inquiry by a consumer about the cost of credit, only the corresponding annual percentage rate or rates shall be stated for open-end transactions, except that the periodic rate or rates may also be stated. With respect to oral responses regarding closed-end credit only the annual percentage rate shall be stated, except that where a simple annual rate or periodic rate is applied to an unpaid balance, that rate may also be stated.

§ 226.30 Spanish language disclosures.

All required disclosures under this regulation shall be made in the English language, except in the Commonwealth of Puerto Rico, where, at the creditor's option, disclosures may be made in the Spanish language. If Spanish disclosures are made, English disclosures shall be provided upon the consumer's request, either in substitution for or in addition to the Spanish disclosures, except that this requirement shall not apply to advertisements of credit or lease transactions subject to this regulation.

§ 226.31 Effect on state laws.

(a) *Inconsistent disclosure requirements.* (1) A state law that is inconsistent with Subparts B (open-end credit), C (closed-end credit), and D (consumer leasing) is preempted to the extent of the inconsistency. Any state-required term or manner of disclosure determined by the Board to be inconsistent shall not be used by a creditor in making disclosures under these subparts. A state law is inconsistent, and is preempted, if the creditor or lessor cannot comply with that law without violating Subparts B, C, or D. If a creditor or lessor can comply with a state law without violating Subparts B, C, or D, the state law is not inconsistent with this regulation. A creditor, lessor, state, or other interested party may request the Board to determine whether a state law is inconsistent.

(2) A state law that is more protective than the provisions of §§ 226.6(d), 226.7(1), 226.9(a), 226.10 and 226.11, paragraphs (b)(4) and (c) through (f) of § 226.12, § 226.13, § 226.21, and Subpart D (consumer leasing) is not inconsistent with this regulation.

(b) *Equivalent disclosure requirements.* If the Board determines that a disclosure required by state law, other than a disclosure relating to the finance charge or annual percentage rate, is substantially the same in meaning as a disclosure required under the credit provisions of Subparts B and C of this regulation, creditors in that state may make the state law disclosure in lieu of the disclosure required by this regulation. A creditor, state or other interested party may request the Board to determine whether a state-required disclosure is substantially the same in meaning as a disclosure required by this regulation.

(c) *Request for determination.* (1) A request for a determination under this section shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

(2) A request for a determination shall include each of the following items:

(i) The text of the state statute, regulation, or other document that is the subject of the request;

(ii) Any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies the relevant provision;

(iii) A comparison of the state law provision with the corresponding provision of this regulation, including a full discussion of the basis for the requesting party's belief that the state provision is either inconsistent or substantially the same; and

(iv) Any other information that the requesting party believes may assist the Board in its determination.

(3)(i) Any request for a determination will be published, with an opportunity for public comment, in the **Federal Register**, unless the Board finds that the time required for prior notice and opportunity for comment would be contrary to the public interest and publishes its reasons for such decision.

(ii) Subject to the Board's rules regarding availability of information (Title 12, Part 261 of the Code of Federal Regulations), all requests made under this section, including any documents and other material submitted in support of the requests, will be made available for public inspection and copying.

(4) Any determination by the Board as to the inconsistency of a state law shall become effective on October 1. If the Board's determination is published in the **Federal Register** after April 1, the effective date of such determination shall be October 1 of the following year. The Board, at its discretion, may lengthen the period of time for creditors or lessors to adjust their forms to accommodate the Board's determination. Any creditor or lessor may comply with the disclosure requirements as determined by the Board prior to the effective date of the determination.

Appendix A—State Exemptions

I. General rule

Any state may apply to the Board to exempt any class of transactions within the state from the requirements of Chapter 2 (Credit Transactions), Chapter 4 (Credit Billing), or Chapter 5 (Consumer Leases) of the act and the corresponding provisions of the regulation.

The Board will grant an exemption if it determines that the state law is substantially similar to the requirements of the act and regulation or, in the case of Chapters 4 or 5, the consumer is afforded greater protection under state law than under the federal act and regulation, and there is adequate provision for enforcement.

II. Procedures

The procedures under which a state may apply for an exemption under this section are set forth as follows:

(A) Disclosure and rescission requirements (§§ 121–131 of Chapter 2), § 226.50;

(B) Issuance of unsolicited credit cards and liability for unauthorized use §§ 132–133 of Chapter 2), § 226.60;

(C) Fair credit billing requirements (§§ 161–171 of Chapter 4), § 226.70.

(D) Fair credit billing requirements (§§ 181–186 of Chapter 5), § 226.80.

Any determination under this section shall become effective on October 1. If the Board's determination is published in the **Federal Register** after April 1, the effective date of such determination shall be October 1 of the following year. The Board, at its discretion, may lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate the Board's determination. Any creditor or lessor may comply with the disclosure requirements as determined by the Board prior to the effective date.

III. Civil liability

No exemptions granted under this section shall extend to the civil liability provisions of sections 130 and 131 of the act. To the extent that an exemption has been granted, the disclosures required under the applicable state law (except any additional requirements not imposed by this regulation) shall satisfy the disclosures required under this act.

'V. Exemptions granted

Section 226.55 lists the states that have ɔeen granted exemptions and identifies the classes of credit transactions covered by the exemptions.

Appendix B—Issuance of Staff Interpretations

I. Official staff interpretations

Each official in the Board's Division of Consumer and Community Affairs is authorized, in that official's discretion, to issue official staff interpretations of this regulation. Official staff interpretations provide the formal protection afforded under section 130(f) of the act.

II. Procedure for issuance of official staff interpretations

A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

If an official staff interpretation is appropriate, it will be published for comment in the **Federal Register**. After opportunity for public comment, an official staff interpretation will become effective upon republication in the **Federal Register**.

III. Scope of interpretations

No staff interpretations will be issued approving creditors' or lessors' forms, statements, calculation tools, or methods. This restriction does not apply to forms, statements, tools, or methods whose use is required or sanctioned by a government agency.

Appendix C—Provisions Applicable to Card Issuers That Bill Consumers on a Transaction-by-Transaction Basis

The following provisions of Subpart B apply where credit cards are issued and (1) the card issuer and the seller are the same person or related persons; (2) no finance charge is imposed; and (3) consumers are billed in full for each use of the card on a transaction-by-transaction basis, by means of an invoice or other statement reflecting each use of the card and (4) no cumulative account is maintained which reflects the transactions by each consumer during a period of time, such as a month:

(i) *Section 226.6(d), and, as applicable, §§ 226.6(b) and (c).* The disclosure required by § 226.6(b) shall be limited to those charges that are or may be imposed as a result of the deferral of payment by use of the card, such as late payment or delinquency charges.

(ii) *Sections 226.7(b) and 226.7(1).* The required disclosures may be achieved by placing the disclosures on the invoice or statement sent to the consumer for each transaction.

(iii) *Section 226.9(a).* Compliance with § 226.9(a) may be achieved by mailing or delivering the statement required by § 226.6(d) to each consumer receiving a transaction invoice during a one-month period chosen by the card issuer or by sending either the statement prescribed by § 226.6(d) or an alternative billing error rights statement substantially similar to that in Appendix F, with each invoice sent to a consumer.

(iv) *Section 226.9(c).*

(v) *Section 226.10.*

(vi) *Section 226.11.* This section would apply when a card issuer receives a payment or other credit that exceeds by more than $1 the amount due, as shown on the transaction invoice. The requirement to credit amounts to an account may be complied with by other reasonable means, such as by a credit memorandum. Since no periodic statement is provided or required for the credit card system subject to this interpretation, a notice of excess payment shall be sent to the consumer within a reasonable period of time following its occurence unless a refund of the excess payment is mailed or delivered to the consumer within five business days of its receipt by the card issuer.

(vii) *Section 226.12 including §§ 226.12(c) and (d), as applicable.* Section 226.12(e) is inapplicable.

(viii) *Section 226.13, as applicable.* All references to "periodic statement" shall be read to indicate the invoice or other statement for the relevant transaction. All actions with regard to corrections and adjusting a consumer's account may b taken by issuing a refund or a new invoice, or by other appropriate means consistent with the purposes of the section.

Appendix D—Multiple Advance Construction Loans

Section 226.17(c)(6) permits creditors to treat multiple advance loans to finance construction of a dwelling that may be permanently financed by the same creditor either as a single transaction or as two transactions. If the actual schedule of advances is not known, the following methods may be used to estimate the interest portion of the finance charge and the annual percentage rate and to make disclosures. If the creditor chooses to disclose the construction phase separately, whether interest is payable periodocially or at the end of construction, Part I may be used. If the creditor chooses to disclose the construction and the permanent financing as one transaction, Part II may be used.

Part I—Construction period disclosed separately

A. If interest is payable only on the amount actually advanced for the time it is outstanding:

1. Estimated interest—Assume that one-half of the commitment amount is outstanding at the contract rate for the entire construction period.

2. Estimated annual percentage rate—Assume a single payment loan that matures at the end of the construction period. The finance change is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule—The number and amounts of any interest payments may be omitted in disclosing the payment schedule under § 226.18(g). The fact that interest payments are required and the timing of such payments shall be disclosed.

4. Amount financed—The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

B. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement:

1. Estimated interest—Assume that the entire commitment amount is outstanding at the contract interest rate for the entire construction period.

2. Estimated annual percentage rate—Assume a single payment loan that matures at the end of the construction period. The finance charge is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule—Interest payments shall be disclosed in making the repayment schedule disclosure under § 226.18(g).

4. Amount financed—The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

Example:

Assume a $50.000 loan commitment at 10.5% with a 5 month construction period and a prepaid finance charge of 2 points.

	(A)	(B)
Estimated interest:	$\$25{,}000 \times .105 \div 12 \times 5 = \$1{,}093.75$	$\$50{,}000 \times .105 \div 12 \times 5 = \$2{,}187.50$
Estimated APR:	$\dfrac{(1{,}093.75 + \$1{,}000) \times 100}{(\$25{,}000 - \$1{,}000)} \div 5 \times 12 =$ 20.94 pct	$\dfrac{(\$2{,}187.50 + \$1{,}000) \times 100}{(\$25{,}000 - \$1{,}000)} \div 5 \times 12 =$ 31.88 pct

Disclosures:		
Principal amount of loan	$50,000	$50,000
Prepaid finance charge	$1,000	$1,000
Amount financed	$49,000	$49,000
Finance charge (estimate)	$2,093.75	$3,187.50
APR (estimate) (percent)	20.94	31.88
Repayment: One payment of principal of $50,000 on 12-12-80. Interest on the amount of credit outstanding will be paid monthly.		Four monthly payments of $437.50, beginning 8-12-80, and a final payment of $50,437.50 on 12-12-80.
Total of payments (estimate)	$51,093.75	$52,187.50

Part II—Construction and permanent financing disclosed as one transaction.

A. The creditor shall estimate the interest payable during the construction period to be included in the total finance charge as follows:

1. If interest is payable only on the amount actually advanced for the time it is outstanding, assume that one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period.

2. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement, assume that the entire commitment amount is outstanding at the contract rate for the entire construction period.

B. the creditor shall compute the estimated annual percentage rate as follows:

1. Estimated interest payable during the construction period shall be treated for computation purposes as a prepaid finance charge (although it shall not be treated as a prepaid finance charge for disclosure purposes).

2. The number of payments shall not include any payments of interest only that are made during the construction period.

3. The first payment period shall consist of:

a. For loans made under paragraph A.1. of Part II, one-half of the construction period plus the time between the end of the construction period and the first amortization payment.

b. For loans made under paragraph A.2. of Part II, entire construction period plus the time between the end of the construction period and the first amortization payment.

C. The creditor shall disclose the repayment schedule as follows:

1. For loans under paragraph A.1. of Part II, without reflecting the number or amounts of payments of interest only that are made during the construction period. The fact that interest payments must be made and the timing of such payments shall be disclosed.

2. For loans under paragraph A.2. of Part II, including any payments of interest only that are made during the construction period.

D. The creditor shall disclose the amount financed as the entire commitment amount less any prepaid finance charge.

Example:

Assume a $50,000 loan commitment at 10.5% with a 5 month construction period and a prepaid finance charge of 2 points, followed by 30-year permanent financing at the same rate with monthly amortization payments of $457.37.

Appendix D

[Computation of estimated APR]

		Interest on amount advanced		Interest on entire commitment
Estimated construction interest = $25,000 × .105 ÷ 12 × 5		= $1,093.75	$50,000 × .105 ÷ 12 × 5 = $2,187.50	
Estimated total finance charge = 360 × $457.37	= $164,653.20		$164,653.20	
Principal	− $50,000.00		− $50,000.00	
Interest on permanent finance	$114,653.20		$114,653.20	
Construction interest	+ $1,093.75		+ $2,187.50	
Points	+ $1,000.00	$116,746.95	+ $1,000.00	$117,840.70
Estimated amount financed =				
Principal	$50,000.00		$50,000.00	
Construction interest	− $1,093.75		− $2,187.50	
Points	− $1,000.00	$47,906.25	− $1,000.00	$46,812.50
Number of payments		360		360
Payment amount		$457.37		$457.37
First payment period ((5 ÷ 2) + 1)		3½ mo	(5 + 1)	6 mo
Estimated APR (actuarial) (percent)		10.75		10.76
Estimated APR (volume I):	$11,674,695 / $47,906.25	= $243.70 = FC/$100	$11,784,070 / $46,812.50	= $251.73 = FC/$100
First period adjustment = 3 mo. 15 days = + 5.0. Using 365 payment line, the figure closest to $243.70 is $247.00, which corresponds to an APR of 11 pct.			First period adjustment = 6 mo = − 10.0. Using 370 payment line, the figure closest to $251.73 is $251.17, which corresponds to an APR of 11 pct.	

Disclosures

Principal amount of credit	$50,000	$50,000
Prepaid finance charge	$1,000	$1,000
Amount financed	$49,000	$49,000
Finance charge (estimate)	$116,746.95	$117,840.70
Annual percentage rate (estimate) (percent)	10.75	10.76
Repayment: Interest on the amount of credit outstanding during the construction period will be paid monthly, followed by 360 monthly payments of $457.37, beginning 1-12-81.		Five monthly payments of $437.50 beginning 8-12-80, followed by 360 monthly payments of $457.37 beginning 1-12-81.
Total of payments (estimate)	$165,746.95	$166,840.70

Appendix E—Annual Percentage Rate Computations for Certain Open-End Credit Plans

In determining the denominator of the fraction under § 226.14(c)(2)(iii)(B), no amount will be used more than once when adding the sum of the balances[1] to which periodic rates apply to the sum of the amounts financed to which specific transaction charges apply. In every case the full amount of transactions to which specific transaction charges apply shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance to which a periodic rate is applied, as illustrated in the following examples of accounts on monthly billing cycles:

1. *Previous balance—none.* A specific transaction of $100 occurs at midpoint of the billing cycle. The average daily balance is $100. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance to which the periodic rate applies exceeds the amount of specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4½%) multiplied by 12 (the number of months in a year), i.e., 54%.

2. *Previous balance—$100.* A specific transaction of $100 occurs at midpoint of the billing cycle. The average daily balance is $150. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance to which the periodic rate applies exceeds the amounts of specific transactions (such excess in this case is $50), totaling $150.

As explained in example 1, the annual percentage rate is 3½% x 12 = 42%.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100, plus the balance to which only the periodic rate is applicable, the $100 previous balance). As explained in example 1, the annual percentage rate is 2¼% x 12 = 27%.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the customer made a payment of $50 at midpoint of billing cycle, the numerator is $3.75 and the deominator is $150 (the amount of the transaction $100, plus the balance to which the periodic rate is applicable, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2½% x 12 = 30%.

[1] Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase "sum of the balances" shall also mean the "average of daily balances."

5. Previous balance—$100. A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1½% applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. the ominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1⅔% x 12=20%.

6. Previous balance—none. A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3% of the transaction amount of $3.00. The periodic rate is 1½% per month applied to the average daily balance. The numerator is the amount of the finance charge, which is $3.75, including the $3.00 transaction charge and $.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction ($100) plus the amount of the transaction ($0). Note that in this situation, where the transaction amount exceeds the balance, the resulting number is considered to be zero rather than a negative number (50−100=−50). The denominator is thus $100. The resulting annual percentage rate is 3¾% x 12=45%.

Appendix F—Open-End Model Disclosure Forms and Clauses

Section F(1)—Disclosures Regarding Balance Computation Methods
Section F(2)—Long Form Billing Error Rights Statement
Section F(3)—Alternative Billing Error Rights Statement
Section F(4)—Notice Regarding Liability for Unauthorized Use
Section F(5)—Notice of Right to Rescind (At Time of Each Transaction)
Section F(6)—Notice of Right to Rescind (At Time of Opening Account)
Section F(7)—Notice of Right to Rescind (At Time of an Increase in Credit Limit)

Section F(1)—Disclosures regarding Balance Computation methods (§§ 226.6(a)(3) and 226.(f))

(a) *Adjusted balance method.* The balance to which the periodic rate is applied in calculating the finance charges is the total amount you owe us at the end of one billing period [excluding any part of that amount that represents a finance charge], less all payments and credits we receive before the end of the next billing period.

(b) *Previous balance method.* The balance to which the periodic rate is applied in calculating the finance charges is the total amount you owe us at the end of each billing period [excluding any portion of that amount that represents a finance charge].

(c) *Average daily balance method (excluding current transactions).* The balance to which the periodic rate is applied in calculating the finance charges is the sum of the actual amounts owning each day of the billing period, not including transactions first charged to your account during the period [and not including any portion of the actual amount that is a finance charge], divided by the total number of days in the billing period.

(d) *Average daily balance method (including current transactions).* The balance to which the periodic rate is applied in calculating the finance charges is the sum of the actual amounts owning each day of the billing period, including transactions first charged to your account during the period [but not including any portion of the actual amount that is a finance charge], divided by the total number of days in the billing period.

Section F(2)—Long Form Billing Error Rights Statement (§ 226.6(d))

YOUR BILLING RIGHTS

KEEP THIS NOTICE FOR FUTURE USE.

This notice contains *important information* about your rights and our responsibilities under the Fair Credit Billing Act.

IN CASE OF ERROR OR QUESTIONS ABOUT YOUR BILL

1. *Notifying us of an error or question.* Send your question in writing (at the creditor's option: on a separate sheet) to the address listed on your bill after the words: "Send Inquiries To:" (or similar wording). (Alternate first sentence: Write to us at (address).) Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the FIRST bill on which the error or problem occurred. You can telephone, but doing so *will not* preserve your rights.

In your letter give us the following information:

* Your name and account number.
* The dollar amount involved in the suspected error.

Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized automatic payment of credit card bills from your savings or checking account with us, you can stop payment on any amount you think is wrong. In order to exercise this right your letter must reach us three business days before the automatic debit is scheduled to occur.

2. *Your rights and our responsibilities after we receive your written notice.* We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days we must either correct the error or explain why we believe the bill was correct.

After we have received your letter, we cannot try to collect any amount you are questioning, or report you to a credit bureau as delinquent because of the questioned amount. We can continue to bill you for the amount you are questioning, including any finance charges that would normally be imposed, and can apply any questioned amount that you have not paid against your credit limit. You do not have to pay any amount in question while we are investigating, however you do remain obligated to pay the parts of your bill not in question.

If we determine that we made a mistake on your bill, you will not have to pay any finance charges on any questioned amount. If we haven't made a mistake, you may have to pay finance charges on any amount in question and you will have to make up any missed required payments on the questioned amount. In either case we will send you a statement of the amount you owe, and when it is due.

If you fail to pay the amount that we conclude is owing, we may report you as delinquent to credit bureaus and other creditors. *However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay we must tell those credit bureaus and other creditors of your dispute and tell you specifically which credit bureaus and other creditors we have contacted.* Once the matter has been settled between us, we must inform those to whom we reported you as delinquent.

If we don't follow these rules, we can't collect the first $50 of the disputed amount including finance charges, even if your bill was correct.

SPECIAL RULE FOR CREDIT CARD PURCHASES

If you have a problem with the quality of property or services purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on them. There are two limitations on this right:

(a) You must have made the purchase in your home State or, if not within you home State, within 100 miles of your current mailing address; and

(b) The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

Section F(3)—Alternative Billing Error Rights Statement (§ 226.9(a))

BILLING RIGHTS SUMMARY IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR BILL

Write us at [address] as soon as you can, if you think your bill is wrong or if you need more information about a transaction on your bill. We must hear from you no later than 60 days after we sent you the FIRST bill on which the error or problem occurred. You can telephone, but doing so *will not* preserve your rights.

In your letter give us the following information:

*Your name and account number.

*The dollar amount of the suspected error.

*Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, however you do remain obligated to pay the parts of your bill not in question. While investigating we cannot report questioned amounts as delinquent or take any action to collect those amounts.

SPECIAL RULE FOR CREDIT CARD PURCHASES

If you have a problem with the quality of goods or services purchased with a credit card and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on them. You have this protection only when the purchase price was more than $50 and the purchase occurred in your home State or within 100 miles of your mailing address. (If we own or opreate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

Section F(4)—Notice Regarding Liability for Unauthorized Use (§ 226.12(b)(2))

You may be liable for the unauthorized use of your credit card (or other term that describes the credit card). You will not be liable for unauthorized use that occurs after you notify (name of card issuer or its designee) orally or in writing of loss, theft, or possible unauthorized use. In any case you liability shall not exceed (insert $50 or any lesser amount under other applicable law or under any agreement with the cardholder.)

Section F(5)—Notice of Right to Rescind (at Time of Each Transaction)(§ 226.15(a)(1)(i))

Notice of Right to Cancel

1. *Your right to cancel.* You have agreed with us on (date) to an extension of credit under your open-end credit account. This extension of credit will result in an increase in the amount of credit outstanding on your open-end credit account which is secured by a mortgage, lien, or other security interest in your home. You have a legal right under federal law to cancel this extension of credit without cost, within three business days after the above date or any later date on which you received a copy of the material Truth in Lending disclosures or this notice of your right to cancel.

If you cancel the extension of credit any additional security interest taken as a result of the extension of credit is also cancelled. Within 20 calendar days of receiving your notice, we must take the steps necessary to reflect the fact that any additional security interest in your home has been cancelled and we must return to you any money or property you have given to us or to anyone else in connection with this extension of credit. If we have given you any money or property, you may keep it until we have performed our obligations. You must then offer to return the money or property; if return of the property itself is impractical or unfair, you must offer its reasonable value. You may make the offer at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. *How to cancel.* If you decide to cancel this extension of credit, you may do so by notifying us, in writing, at (creditor's name and business address). You may use any written statement that is signed and dated to cancel this extension of credit. You may use this notice by dating and signing below. Retain one copy of this notice regardless of the method you use to cancel since it contains important information about your rights.

If you cancel by mail or telegram, the notice must be sent no later than midnight of (date). If you use any other means to deliver or transmit to us your written notice to cancel, it must be delivered to the above address no later than that time.

I hereby cancel this transaction.

(Consumer's signature) ______

(Date) ______

Name (please print) ______

Address (please print) ______

Section F(6)—Notice of Right to Rescind (At Time of Opening Account)(§ 226.15(a)(1)(ii))

Notice of Right to Cancel

1. *Your right to cancel.* You have agreed with us on (date) to establish an open-end credit account that is to be secured by your home. Opening this account will result in a mortgage, lien, or other security interest in your home. You have a legal right under federal law to cancel this account, without cost, within three business days after the above date or any later date on which you received your initial Truth in Lending disclosures or this notice of your right to cancel.

If you cancel the account, the security interest is also cancelled. Within 20 days of receiving your notice, we must take the steps necessary to reflect the fact that the security interest in your home has been cancelled and we must return to you any money or property you have given to us or to anyone else in connection with this account. If we have given you any money or property, you may keep it until we have performed our obligations. You must then offer to return the money or property; if return of the property itself is impractical or unfair, you must offer its reasonable value. You may make the offer at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 days of your offer, you may keept it without further obligation.

2. *How to cancel.* If you decide to cancel this account, you may do so by notifying us, in writing, at (creditor's name and business address). You may use any written statement that is signed and dated to cancel this account. You may use this notice by dating and signing below. Retain one copy of this notice regardless of the method you use to cancel since it contains important information about your rights.

If you cancel by mail or telegram, the notice must be sent no later than midnight of (date). If you use any other means to deliver or transmit to us your written notice to cancel, it must be delivered to the above address no later than that time.

I hereby cancel this transaction.

(Consumer's signature) ______

(Date) ______

Name (please print) ______

Address (please print) ______

Section F(7)—Notice of Right To Rescind at Time of an Increase in Credit Limit (§ 226.15(a)(1)(ii))

Notice of Right to Cancel

1. *Your right to cancel.* You have agreed with us on (date) to increase the credit limit on your open-end credit account that is secured by your home. Increasing the credit limit will result in an increase in the amount of the mortgage, lien, or other security interest in your home. You have a legal right under federal law to cancel this increase, without cost, within three business days after the above date or any later date on which you received your material Truth in Lending disclosures or this notice of your right to cancel.

If you cancel the increase, the additional security interest is also cancelled. Within 20 calendar days of receiving your notice, we must take the steps necessary to reflect the fact that the additional security interest in your home has been cancelled and we must return to you any money or property you have given to us or to anyone else in connection with this increase. If we have given you any money or property, you may keep it until we have performed our obligations. You must then offer to return the money or property; if return of the property itself is impractical or unfair, you must offer its reasonable value. You may make the offer at your home or at the location of the property. Money must be returned to the address shown below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

2. *How to cancel.* If you decide to cancel this increase, you may do so by notifying us, in writing, at (creditor's name and business address). You may use any written statement that is signed and dated to cancel this increase. You may use this notice by dating and signing below. Retain one copy of this notice regardless of the method you use to cancel since it contains important information about your rights.

If you cancel by mail or telegram the notice must be sent no later than midnight of (date). If you use any other means to deliver or transmit to us your written notice to cancel, it must be delivered to the above address no later than that time.

I hereby cancel this transaction.

(Consumer's signature) ____________

(Date) ____________

Name (please print) ____________

Address (please print) ____________

Appendix G—Closed-End Model Forms and Clauses

Section G(1)—Model Sale Disclosure
Section G(2)—Model Loan Disclosure
Section G(3)—Model for the Explanation of the Amount Financed
Section G(4)—Model for Combined RESPA and Truth in Lending Disclosures
Section G(5)—Notice of Right to Rescind
Section G(6)—Disclosures Regarding Variable Rates
Section G(7)—Disclosures Regarding Demand Obligations
Sample I—Sale Disclosure with Explanation of Amount Financed
Sample II—Loan Disclosure
Sample III—Mortgage Disclosure with Explanation of Amount Financed

BILLING CODE 6210-01-M

SECTION G(1)—MODEL SALE DISCLOSURE

(Name of Creditor)

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of my credit as a yearly rate.	The dollar amount the credit will cost me, if I pay as scheduled.	The amount of credit provided to me or on my behalf.	The amount I will have paid when I have made all payments as scheduled.	The total cost of my purchase on credit including my down payment of $______
%	$	$	$	$

I have the right to receive at this time a written explanation of the Amount Financed.
____ I want an explanation. ____ I do not want an explanation.

My payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due

Insurance
Credit life insurance and disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. ______ Signature
Credit Life and Disability		I want credit life and disability insurance. ______ Signature

Property insurance may be obtained from anyone I desire that is acceptable to the creditor.
If I get the insurance from (creditor), I will pay $______.

[Filing fees: $______] [Non-filing insurance $______]

Late Charge: I will be charged [$______] [____% of the payment] if a payment is not received within ____ days of its due date.

Security: I am giving a security interest in [the goods being purchased.] [and] [(other property.)______
______
______]

Prepayment: If I pay off early I will [not] have to pay the total finance charge. I will [not] have to pay a penalty.

Assumption: Someone buying my home [may be allowed to] [cannot] assume the remainder of the mortgage on the original terms.

I can refer to my contract documents for any additional information they may contain about nonpayment, default, any required repayment of this obligation in full before the scheduled date, and prepayment rebates and penalties.

I have a copy of this statement. ______ Signature ______ Date

---

e means dollar amount is an estimate.

SECTION G(2)—MODEL LOAN DISCLOSURE

(Name of Creditor)

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of my credit as a yearly rate.	The dollar amount the credit will cost me, if I pay as scheduled.	The amount of credit provided to me or on my behalf.	The amount I will have paid when I have made all payments as scheduled.
%	$	$	$

I have the right to receive at this time a written explanation of the Amount Financed.
___ I want an explanation. ___ I do not want an explanation.

My payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due

Insurance
Credit life insurance and disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. ______________ Signature
Credit Life and Disability		I want credit life and disability insurance. ______________ Signature

Property insurance may be obtained from anyone I desire that is acceptable to the creditor.
If I get the insurance from (creditor) I will pay $______________.

[Filing fees: $________] [Non-filing insurance $__________]

Late Charge: I will be charged [$________] [_____% of the payment] if a payment is not received within _____ days of its due date.

Security: I am giving a security interest in [the goods being purchased.] [and] [(other property.)______________________________
____
____]

Prepayment: If I pay off early I will [not] have to pay the total finance charge. I will [not] have to pay a penalty.

Assumption: Someone buying my home [may be allowed to] [cannot] assume the remainder of the mortgage on the original terms.

I can refer to my contract documents for any additional information they may contain about nonpayment, default, any required repayment of this obligation in full before the scheduled date, and prepayment rebates and penalties.

I have a copy of this statement. ______________________ Signature ____________ Date

e means dollar amount is an estimate.

SECTION G(3)—MODEL FOR THE EXPLANATION OF THE AMOUNT FINANCED

Explanation of Amount Financed of $. ____________

$ ____________ Amount given to me directly.

$ ____________ Amount paid on my account.

$ ____________ Amount(s) paid to others on my behalf.

- $ ____________ to public officials
- $ ____________ to (name of another creditor)
- $ ____________ to (name of insurance company)

$ ____________ Prepaid finance charge

____________________ ____________
Signature Date

SECTION G(4)—MODEL FOR COMBINED RESPA AND TRUTH IN LENDING DISCLOSURES

(Lender's Name) (Consumer's Name)

RESPA Good Faith Estimates of Settlement Costs and Explanation of the Amount Financed of $__________

Settlement Statement Line Number	Settlement Service	Prepaid Finance Charge	Charge Included in Amount Financed	Charge Paid in Cash
	TOTALS			

* (Lender) requires that I use the following providers of settlement services in this transaction. The estimates of my costs are based upon each provider's charges.

Name	Address and Telephone	(Lender) has a business relationship with this provider.
__________	__________	__________
__________	__________	__________

This form includes all settlement service charges I must pay, but it may not cover all items I may have to pay in cash at settlement. I may want to ask about the cost of any items I must pay that are not shown on this form.

The Real Estate Settlement Procedures Act (RESPA) requires that I receive a booklet describing the settlement process and this estimate of costs when I apply for a mortgage loan or within three business days of applying.

BILLING CODE 6210-01-C

Section G(5)—Notice of Right to Rescind (§ 226.23(b))

Notice of Right to Cancel

You are entering into a transaction that may result in a security interest in your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days, from whichever of the following three events occurs last.

(1) The date of the transaction, which is ———.

(2) The date you received your Truth in Lending disclosures.

(3) The date you received this notice of your right to cancel.

If you decide to cancel this transaction, you may do so by notifying us in writing, at (creditor's name and business address). You may use any written statement that is signed and dated to cancel this transaction, or you may use one copy of this notice by dating and signing below. You may want to keep the other copy because it contains important information about your rights. If you cancel by mail or telegram, the notice must be sent no later than midnight of (date). If you use any other means to cancel, it must be delivered to the above address no later than that time.

If you cancel the transaction, the security interest is also cancelled. Within 20 calendar days of receiving your notice, we must take the steps necessary to reflect the fact that the security interest in your home has been cancelled and we must return to you any money or property you have given to us or to anyone else in connection with this transaction. If we have given you any money or property, you may keep it until we have performed our obligations. You must then return the money or property; if return of the property itself is impractical or unfair, you must offer its reasonable value. At your option, you may offer to return the property at your home or at the location of the property. Money must be returned to the above address. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

I hereby cancel this transaction.

(Consumer's signature) ———

(Date) ———

Section G(6)—Disclosures Regarding Variable Rates (§ 226.18(f))

The annual percentage rate may increase during the term of this transaction under the following conditions:

[An increase in the prime interest rate of this lender]

[My deposit accounts fail to maintain a balance of ———]

[I terminate my employment with ———]

An increase is limited in the following manner:

[The rate will not increase above ——%]

[The maximum increase at one time will be ——%]

Any increase will take the form of:

[Higher payment amounts]

[More payments of the same amount]

[A larger amount due at maturity]

Section G(7)—Disclosures Regarding Demand Obligations (§ 226.18(i))

This obligation [is payable on demand.] [has a demand feature.]

[All disclosures are based on an assumed maturity of one year.]

BILLING CODE 6210-01-M

SAMPLE 1 - SALE DISCLOSURE WITH EXPLANATION OF AMOUNT FINANCED

XYZ Auto, Inc. Glenn Jones

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost me, if I pay as scheduled.	Amount Financed The amount of credit provided to me or on my behalf.	Total of Payments The amount I will have paid when I have made all payments as scheduled.	Total Sale Price The total cost of my purchase on credit including my down payment of $ 1500.00
13.18 %	$1320.38	$ 6107.50	$ 7427.88	$ 8952.88

My payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
36	$206.33	Monthly beginning 6-1-81

Insurance

Credit life insurance and disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life	$120.00	I want credit life insurance. Glenn Jones Signature
Credit Life and Disability		I want credit life and disability insurance. Signature

[Filing fees: $ 12.50

Late Charge: I will be charged [$ 10-] ~~[% of the payment]~~ if a payment is not received within 10 days of its due date.

Security: I am giving a security interest in [the goods being purchased.] ~~[and] [(other property)]~~

]

Prepayment: If I pay off early I will [not] have to pay the total finance charge. ~~I [will] [not] have to pay a penalty.~~

I can refer to my contract documents for any additional information they may contain about nonpayment, default, any required repayment of this obligation in full before the scheduled date, and prepayment rebates and penalties.

I have a copy of this statement. Glenn Jones 5-1-81
Signature Date

e means dollar amount is an estimate.

Explanation of Amount Financed of $ 6107.50

$ 0 Amount given to me directly.

$ 6000.00 Amount paid on my account.

$ 132.50 Amount(s) paid to others on my behalf.

- $ 12.50 to public officials
- $ 120.00 to Acme Insurance Company
- $ N/A to

$ 25.00 Prepaid finance charge

SAMPLE II—LOAN DISCLOSURE

FEDERAL BANK & TRUST CO.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost me, if I pay as scheduled.	Amount Financed The amount of credit provided to me or on my behalf.	Total of Payments The amount I will have paid when I have made all payments as scheduled.
10.08 %	$ 540-	$ 5000-	$ 5540-

I have the right to receive at this time a written explanation of the Amount Financed.

___ I want an explanation. X I do not want an explanation.

My payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
1	$250-	June 1, 1981
23	$230-	Monthly, beginning July 1, 1981

Insurance

Credit life insurance and disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. ______ Signature
Credit Life and Disability		I want credit life and disability insurance. ______ Signature

Property insurance may be obtained from anyone I desire that is acceptable to the creditor.
If I get the insurance from Federal B & T Co., I will pay $__________.

Late Charge: I will be charged 5 % of the payment if a payment is not received within 15 days of its due date.

Security: I am giving a security interest in [the goods being purchased.] [and] [(other property.)______

______

______]

Prepayment: If I pay off early ~~I will [not] have to pay the total~~ finance ~~charge~~. I will not have to pay a penalty.

I can refer to my contract documents for any additional information they may contain about nonpayment, default, any required repayment of this obligation in full before the scheduled date, and prepayment rebates and penalties.

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e means dollar amount is an estimate.

SAMPLE III—MORTGAGE DISCLOSURE WITH EXPLANATION OF AMOUNT FINANCED

FEDERAL SAVINGS AND LOAN

Janet Smith
Account # 53-4666-69

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost me, if I pay as scheduled.	Amount Financed The amount of credit provided to me or on my behalf	Total of Payments The amount I will have paid when I have made all payments as scheduled.
13.91 %	$161,786.74	$49,287.33	$207,836.40

My payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
360	$583.99	Monthly beginning June 1, 1981

Insurance
Credit life insurance and disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. ______ Signature
Credit Life and Disability		I want credit life and disability insurance. ______ Signature

Late Charge: I will be charged 5 % of the payment if a payment is not received within 15 days of its due date.

Security: I am giving a security interest in the property being purchased.

Prepayment: If I pay off early ~~I will [not] have to pay the total finance charge~~. I will [~~not~~] have to pay a penalty.

Assumption: Someone buying my home cannot assume the remainder of the mortgage on the original terms.

I can refer to my contract documents for any additional information they may contain about nonpayment, default, any required repayment of this obligation in full before the scheduled date, and prepayment rebates and penalties.

I have a copy of this statement. Janet Smith (Signature) 4-15-81 (Date)

e means dollar amount is an estimate

SAMPLE III—CONTINUED

FEDERAL SAVINGS AND LOAN

Janet Smith
Account # 53-4666-69

RESPA Good Faith Estimates of Settlement Costs and Explanation of the Amount Financed of $ 49,287.33

Settlement Statement Line Number	Settlement Service	Prepaid Finance Charge	Charge Included in Amount Financed	Charge Paid in Cash
801.	Loan Origination Fee (1%)	$500		
803.	Appraisal Fee			$125
804.	Credit Report Fee			$ 20
901.	Interest (15 days)	$287.67		
1101.	Settlement Fee	$ 50		
1107.	Attorney's Fees* (includes 1102. Title Search and 1105. Document preparation)			$200
1108.	Title Insurance		$125	
1201.	Recording Fees			$ 22.50
1203.	State Tax			$125
1301.	Survey			$ 80
	TOTALS	$837.67	$125	$572.50

* Federal S & L requires that I use the following providers of settlement services in this transaction. The estimates of my costs are based upon each provider's charges.

Name	Address and Telephone	Federal Savings and Loan has a business relationship with this provider?
G.L. Griffith	100 Main St., N.Y., N.Y. 10010 (212)555-1213	No

This form includes all settlement service charges I must pay, but it may not cover all items I may have to pay in cash at settlement. I may want to ask about the cost of any items I must pay that are not shown on this form.

The Real Estate Settlement Procedures Act (RESPA) requires that I receive a booklet describing the settlement process and this estimate of costs when I apply for a mortgage loan or within three business days of applying.

BILLING CODE 6210-01-C

Appendix H—Leasing Model Forms

Section H(1)—Model for Open-end or Finance Vehicle Lease Disclosures

Section H(2)—Model for Closed-end or Net Vehicle Lease Disclosures

Section H(3)—Model for Furniture Lease Disclosures

BILLING CODE 6210-01-M

SECTION H(1)--MODEL FOR OPEN-END OR FINANCE VEHICLE LEASE DISCLOSURES

Date ____

1. LESSOR(S) ____ LESSEE(S) ____

2. Description of leased property

Year	Make	Model	Body Style	Vehicle ID #

3. (a) Initial Charges, consisting of
☐ Capitalized Cost Reduction ☐ Trade-in Allowance ☐ ____ $____
(b) Other Charges Payable at Inception, consisting of
☐ Advance Monthly Payment of ____
☐ Refundable Security Deposit ☐ Delivery Charge
☐ Registration Fees ☐ ____ $____
Total Payment Due at Inception: $____
4. (a) Basic Monthly Payment: $____
(b) Other Charges Payable Monthly:
☐ Maintenance ☐ Registration Fees
☐ Insurance ☐ ____ $____
Total Monthly Payment: $____
5. Term of this lease: ____
The first monthly payment of $____ is due on ____; ____ subsequent payments of $____ on the ____ of each month thereafter.
6. Total of Basic Monthly Payments: $____
7. Total of Other Charges Payable to Lessor:
☐ Disposition $____ ☐ Maintenance $____
☐ ____ $____ $____
8. Fees and Taxes
Total amount you will pay during the term for official fees, registration, certificate of title, license fees and taxes. $____
9. Insurance
The following types and amounts of insurance will be acquired in connection with this lease: ____
☐ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $____.
☐ You (lessee) agree to provide insurance coverage in the amounts and types indicated above. $____
10. Estimated ____ value of the vehicle at the end of the lease term:
(Your liability for this sum may be limited. See Item 14.) $____
11. Total Lease Obligation:
(Items 3(a), 6 and 10.) $____
12. Initial Value of Vehicle: $____
13. Difference:
(Item 11 less Item 12.) $____
14. End of Term Liability

(a) The estimated value of the vehicle stated in Item 10 is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is *greater* than the estimated value, you will have no further liability under this lease, except for other charges already incurred [and are entitled to a credit or refund of any surplus].

If the actual value of the vehicle is *less* than the estimated value, you will be liable for any difference up to $____ (3 times Item 4(a)). For any difference in excess of that amount, you will be liable only if

1. Excessive use or damage [as described in Item 15] [representing more than normal wear and tear] resulted in an unusually low value at the end of the term.
2. You voluntarily agree with us after the end of the lease term to make a higher payment.
3. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment.

Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual value was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle.

Unless we prove that the excess amount owed was the result of excessive use or unreasonable wear and tear, we will pay your reasonable attorney's fees.

(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the ____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

15. Standards for Wear and Use
The following standards are applicable for determining unreasonable or excessive wear and use of the leased vehicle: ____.

16. Maintenance
[You are responsible for the following maintenance and servicing of the leased vehicle: ____.]
[We are responsible for the following maintenance and servicing of the leased vehicle: ____.]

17. Warranties
The leased vehicle is subject to the following express warranties: ____.

18. Early Termination and Default
(a) You may terminate this lease before the end of the lease term under the following conditions: ____.
The charge for such early termination is ____.
(b) We may terminate this lease before the end of the lease term under the following conditions: ____.
Upon such termination we shall be entitled to the following charge(s) for ____.
(c) To the extent these charges take into account the value of the vehicle at the end of the lease term, you have the same right to a professional appraisal as that stated in Item 14(b).

19. Security Interest
We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: ____.

20. Late Payments
The charge for late payments is ____.

21. Option to Purchase
[You have an option to purchase the leased vehicle at the following times: ____.
If at the end of the term, the price will be $____.
If prior to the end of the term, the price will be $____.]
[You have no option to purchase the leased vehicle.]

SECTION H(2)--MODEL FOR CLOSED-END OR NET VEHICLE LEASE DISCLOSURES

Date____________________

1. LESSOR(S) ____________________ LESSEE(S) ____________________

2. Description of leased property

Year	Make	Model	Body Style	Vehicle ID #

3. Total Payment Due at Inception:
☐ Capitalized Cost Reduction ☐ Delivery Charge
☐ Trade-in Allowance ☐ Registration Fees
☐ Advance Monthly Payment of____________________
☐ Refundable Security Deposit ☐ ____________________ $__________

4. Term of this lease:____________________
The first monthly payment of $__________ is due on____________________; __________ subsequent payments of $__________ on the__________ of each month thereafter.

5. Total Monthly Payment: $__________

6. Total of Monthly Payments: $__________

7. Total of Other Charges Payable to Lessor:
☐ Disposition $__________ ☐ Maintenance $__________
☐ ____________________ $__________ $__________

8. Fees and Taxes
Total amount you will pay during the term for official fees, registration, certificate of title, license fees and taxes. $__________

9. Insurance
The following types and amounts of insurance will be acquired in connection with this lease:____________________.
☐ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $__________.
☐ You (lessee) agree to provide insurance coverage in the amounts and types indicated above. $__________

10. Standards for Wear and Use
The following standards are applicable for determining unreasonable or excessive wear and use of the leased vehicle:____________________.

11. Maintenance
[You are responsible for the following maintenance and servicing of the leased vehicle:____________________.]
[We are responsible for the following maintenance and servicing of the leased vehicle:____________________.]

12. Warranties
The leased vehicle is subject to the following express warranties:____________________.

13. Early Termination and Default
(a) You may terminate this lease before the end of the lease term under the following conditions:____________________.
The charge for such early termination is____________________.
(b) We may terminate this lease before the end of the lease term under the following conditions:____________________.
Upon such termination we shall be entitled to the following charge(s) for____________________.
(c) To the extent that these charges take into account the value of the vehicle at the end of the lease term, if you disagree with the value we assign to the vehicle, you may obtain at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the__________ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

14. Security Interest
We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:____________________.

15. Late Payments
The charge for late payments is____________________.

16. Lessee's Option to Purchase
[You have an option to purchase the leased vehicle at the following times:____________________.
If at the end of the term, the price will be $__________.
If prior to the end of the term, the price will be $____________________.]
[You have no option to purchase the leased vehicle.]

SECTION H(3)--MODEL FOR FURNITURE LEASE DISCLOSURES

Date____________________

1. LESSOR(S) ____________________ LESSEE(S) ____________________

2. Description of leased property [is attached].

Item	Color	Stock #	Mfg.	Qty.					

3. Total Payment Due at Inception:
   ☐ Refundable Security Deposit ☐ Delivery Charge $__________
   ☐ Advance Monthly Payment of__________ ☐ __________
4. Term of this lease:__________
   The first monthly payment of $__________is due on__________, ______subsequent payments of $__________on the__________of each month thereafter.
5. Total Monthly Payment: $__________
6. Total of Monthly Payments: $__________
7. Total of Other Charges Payable to Lessor:
   ☐ Pick-up Charge $__________ ☐ __________ $__________ $__________
8. Fees and Taxes
   Total amount you will pay during the term for official fees and taxes. $__________
9. Insurance
   ☐ You (lessee) agree to provide insurance coverage of the following types in the following amounts:__________
   ☐ We (lessor) will provide the following types and amounts of insurance coverage:__________
   Total premium cost: $__________
   ☐ You agree to pay a waiver fee of $__________per month in lieu of insurance.
   Total Waiver Fee: $__________
10. Maintenance
    [You are responsible for the following maintenance of the leased property:__________.]
    [We are responsible for the following maintenance of the leased property:__________.]
11. Warranties
    The leased property is subject to the following express warranties:__________
12. Standards for Wear and Use
    The following standards are applicable for determining unreasonable or excessive wear and use of the leased property:__________
13. Early Termination and Default
    (a) You may terminate this lease before the end of the lease term under the following conditions:__________
    The charge for such early termination is__________
    (b) We may terminate this lease before the end of the lease term under the following conditions:__________
    Upon such termination we shall be entitled to the following charge(s):__________
14. Security Interest
    We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:__________
15. Late Payments
    The charge for late payments is__________
16. Option to Purchase
    [You have an option to purchase any or all items of the leased property at the following times:__________
    If at the end of the term, the price will be $__________
    If prior to the end of the term, the price will be $__________]
    [You have no option to purchase the leased property.]

BILLING CODE 6210-01-C

Appendix I—Federal Enforcement Agencies

The following list indicates which Federal agency enforces Regulation Z for particular classes of businesses. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency.

National Banks

Consumer Community and Fair Lending and Examination Division, Comptroller of the Currency, Washington, D.C. 20219.

State Member Banks

Federal Reserve Bank serving the district in which the State member bank is located.

Nonmember Insured Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks Insured by FDIC)

The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

Creditors Subject to Civil Aeronautics Board

Director, Bureau of Consumer Protection, Civil Aeronautios Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations

Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, D.C. 20578.

Retail, Department Stores, Consumer Finance Companies, all Other Creditors, and All Nonbank Credit Card Issuers (Creditors operating on a local or regional basis should use the address of the FTC Regional Office in which they operate.) Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Regulatory Analysis of Proposed Revision of Regulation Z

Summary

The draft of revised Regulation Z prepared by staff of the Division of Consumer and Community Affairs would make major changes in the currently existing regulation. These proposed changes arise from two sources: (1) revisions in the regulation necessitated by passage of the Truth-in-Lending Simplification and Reform Act; and (2) staff proposals to simplify the existing regulatory struture further within the limits of discretion granted to the Board by the Truth-in-Lending Act.

The Simplification and Reform Act has resulted in five major kinds of proposed revisions in the regulatory structure: (1) Required disclosures have been reduced in number; (2) creditor compliance has been made easier in a number of ways, especially by providing model forms guaranteeing compliance if used properly; (3) civil liability of creditors has been limited to certain important disclosures; (4) the main burden of compliance enforcement has been shifted away relatively from the kinds of private actions that have contributed to complex rules and court decisions in the past and toward relatively greater reliance on administrative enforcement; and (5) certain complex legal questions that have produced conflicting court decisions in the past have been clarified. Staff efforts to simplify the regulation further have resulted in additional significant kinds of changes designed to: (1) Provide clearer definitions and standards of applicability; (2) make good faith compliance easier by providing for small disclosure tolerances; (3) minimize necessity of disclosures unrelated to credit decisionmaking; (4) allow creditors greater flexibility in preparing disclosures to fit the nature of individual transactions; and (5) eliminate other complexities and ambiguities.

On balance, each of the major proposed changes in the regulatory structure should produce net consumer benefits by substantially reducing regulatory burden without sacrificing important consumer protections. Important consumer disclosures would be retained in the revised regulation, but the complexity of compliance and frequency of changes should be reduced. This should reduce the regulatory burden by reducing legal costs, printing expenses, employee training costs, and programming and computing expenditures. These gains would only be achieved at the expense of start-up costs. It is not possible with currently available data to estimate accurately either the long-term savings or the short-term costs associated with changing to the new requirements, but the available lead time of one year should help minimize the latter. Furthermore, it appears that long run cost reductions should outweigh the start-up costs. In this regard, possibly the most important single contribution of the new regulation is the provision of model forms that guarantee compliance if used properly.

I. Background

Truth in Lending, enacted by Congress as Title I of the Consumer Credit Protection Act of 1968 (Pub. L. 90–321, May 29, 1968), is an important element of Federal consumer protection policy in the credit area. In essence, the various Federal consumer credit protections established by Congress since 1968, including Truth in Lending, might be characterized as combining two general regulatory approaches, although in different combinations. The first approach is disclosure—requiring that certain information be disclosed to consumers in a prescribed manner. Information disclosure is an important ingredient in most Federal consumer credit protections; but it is so essential to some, including Truth in Lending, the Real Estate Settlement Procedures Act (1974), the Home Mortgage Disclosure Act (1975), the Consumer Leasing Act (1976), and the Electronic Funds Transfer Act (1978), that these acts might properly be classified as "information protections." In contrast, the second regulatory approach involves more than disclosure: it involves requiring institutions to do or not do certain things or act in certain ways in their relations with consumers in the marketplace. In these cases disclosures might also be required, but disclosures are subordinate in importance to other elements. As a result, these regulations might be classified better as "behavioral protections" or "market protections." Examples in the credit area include the Fair Credit Reporting Act (1970), the Fair Credit Billing Act (1974), the Equal Credit Opportunity Act (1974 and 1976), and the Fair Debt Collection Practices Act (1977). Each of these acts requires disclosures under certain circumstances, but their requirements governing the market conduct of institutions are more important.

On its face Truth in Lending (TIL) appears to be both a reasonable and simple idea, but in practice the problems have proven to be immense. The House, Senate, and Conference Committee *Reports* expressing the intentions of Congress reveal both the simplicity of the idea and the reason for its operational complexity. According to the Senate *Report:*[1]

> The basic purpose of the Truth-in-Lending bill is to provide a full disclosure of credit charges to the American consumer. The bill does not in any way regulate the credit industry nor does it prescribe ceilings on credit charges. Instead it requires that full

[1] United States Senate, Committee of Banking and Currency, *Truth in Lending 1967, Report to Accompany S.5* (Washington: Government Printing Office, 1967), p. 1.

disclosure of credit charges be made so that the consumer can decide for himself whether the charge is reasonable.

This passage makes it abundantly clear that Congress intended Truth in Lending to be a disclosure law and an information protection rather than a market protection. This notion is re-emphasized in many parts of the Committee *Reports*. However, this passage also reveals the genesis of many later problems with TIL exemplified by the concept of "full disclosure." Rather than concentrating on a few fundamental disclosures, Truth in Lending and Regulation Z have always required a much more extensive list. Apparently drafted under the assumption that more disclosure is necessarily better than less, TIL and Regulation Z have required disclosure of all information that conceivably might be useful to someone sometime. Together with the diversity of consumer credit transactions and the penalties for violating the law or regulation, this principle has contributed substantially to TIL's complexity.

Originally the Truth-in-Lending Act filled more than 13 printed pages in the Conference Committee *Report* and included 30 separate sections. In addition, the original Regulation Z filled 30 pages in 98 separate sections plus a supplement booklet dealing with APR calculations. Moreover, Truth in Lending was amended in 1970, 1974, twice in 1976, and in 1978; Regulation Z was amended many time between July 1, 1969, and March, 1980. By early 1980 the Act filled 20 printed pages in 52 numbered sections, many with lengthy subdivisions. The regulation measured 53 printed pages in 153 highly technical sections (many with subsections) plus the APR supplement.

However, probably most indicative of difficulties surrounding TIL is the number of times that Regulation Z has been interpreted, both administratively and by the courts. By early 1980 more than 1500 interpretations had been published by the Federal Reserve Board and staff, with varying degrees of legal authority. In addition, by June 30, 1979, more than 13,000 TIL lawsuits has been filed in Federal courts, representing 2 per cent of the Federal civil caseload (but up to 50 per cent of the cases in some districts).[2] This almost continuous stream of amendments, interpretations, and court decisions, along with interacting changes in state laws affecting such things as rate ceilings and security interests, produced a situation where total compliance was very difficult, at best. As long as 9 years after the effective date of the Act (July 1, 1969), the Federal bank regulatory agencies reported that more than 80 per cent of banks were not wholly in compliance, although most violations were judged "nonsubstantive" or "technical."[3] By the later 1970's legal situation became somewhat ironic in that much of the litation over Truth in Lending concerned aspects of disclosures apart from credit cost disclosures, the critical elements of Truth in Lending according to Congress. Notable among disputed areas in the late 1970's were identity of the creditor, security interest issues, disclosure of loan proceeds, acceleration clause issues, and issues of rescission.[4]

As a result of the difficult legal conditions surrounding Truth in Lending a movement to "simplify" the law gained support in the second half of the 1970's. "Simplification" is, of course, a concept that is relatively easy to support in principle, although strong differences may develop when the concept is defined more closely. Possibilities include: A more clearly worded statute, a less resticitive statute, fewer required disclosures, easier to read forms, less information-packed forms, reduced liability for creditors, additional defenses (for creditors or consumers), greater preemption of state laws, a shorter regulation, a clearer regulation, fewer interpretations, more but clearer interpretations, etc. Nevertheless, by mid 1977 the idea of "simplifying" Truth in Lending had gained a measure of bipartisan support in the United States Senate, even if not complete agreement on details.[5] Four bills were introduced in the 95th Congress in 1977, and after entensive hearings and markup sessions, a bill was reported out by the Senate Banking Committee and passed by the Senate on May 10, 1978. However, the House took no action in the 95th Congress and the bill was reintroduced in the 96th Congress in 1979. After another hearing the bill passed the Senate again in May, 1979, and eventually (with some amendments) the Truth in Lending Simplification and Reform Act was incorporated into the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96–221), which was signed by the President on March 31. Shortly afterward, on May 5, 1980, the Federal Reserve Board issued for public comment a complete redraft of Regulation Z to implement the new Act.

II. Framework for Evaluation

Regulatory anlaysis of the draft of revised Regulation Z ultimately involves answering questions in two difficult areas. The first area involves comparing the new regulatory structure to the old: In particular, does the new structure improve upon and/or simplify the old, and what, if any, are the structural benefits of the new regulatory approach? This question is examined in Section III. The second area concerns the new regulatory structure as an information protection: Specifically, is the new approach likely to affect consumers' information needs in the credit area or have other impacts on the goals of Truth in Lending? This question forms the subject matter of Section IV.

III. Regulatory Structure

1. *Changes Required by the Simplification and Reform Act.* The Truth-in-Lending Simplification and Reform Act made extensive changes in the Truth in Lending Act. According to the Senate Committee on Banking, Housing, and Urban Affairs, which drafted the Reform Act, the Committee's efforts were focused on four general areas: "providing the consumer with simpler, more understandable information; making compliance easier for creditors; limiting creditor civil liability or statutory penalities to only significant violations; and strengthening administrative restitution enforcement of the act."[6] A fifth area concerned technical changes to eliminate legal problems that had arisen from inconsistent decisions among Federal district courts. Substantive changes were made in each of the five areas.

Table I lists major kinds of changes made in each of these areas by the Simplification and Reform Act and reflected in the draft of revised Regulation Z. As can be seen, the Simplification Act made such fundamental changes in each area that the 1980 amendments might be characterized better as producing a new Truth-in-Lending Act than merely as amending the old act. For example, among the important changes the number of disclosures has been reduced

[2] Source: Administrative Office of the United States Courts.

[3] Board of Governors of the Federal Reserve System, *Annual Report to Congress on Truth in Lending for the year 1978* (January 3, 1979), pp. 10–11.

[4] For a concise review of the issues and cases in these areas see David S. Willenzik, "Truth in Lending Litigation, Specific Problem Areas," *Journal of Retail Banking*, June 1979.

[5] See United States Senate, Committee on Banking, Housing and Urban Affairs, *Simplify and Reform the Truth in Lending Act, Hearings on S. 1312, S. 1501, and S. 1653*, July 11–13, 1977 (Washington: Government Printing Office, 1977).

[6] United States Senate, Committee on Banking, Housing, and Urban Affairs, *Truth in Lending Simplification and Reform Act, Report to Accompany S. 108* (Washington: Government Printing Office, 1979), p.3.

and the format changed, model forms have been required and other changes have been made to aid compliance, civil penalties have been limited to key disclosures, and enforcement provisions have been altered. Because changes in these and other areas of the act are so substantial, major changes are also required in Regulation Z.

Table I—Areas of Change in Draft Regulation Z Arising From the Truth-in-Lending Simplification and Reform Act

1. Changes To Provide Consumers With Simpler, More Understandable Information. A. Reduction in the absolute number of disclosures, especially by reducing itemizations on closed-end credit.

B. Providing that supplemental information may not be intermingled with Truth-in-Lending disclosures.

C. Providing for short descriptive phrases to accompany numerical disclosures.

D. Providing that residential first mortgage disclosures be given at some time as Real Estate Settlement Procedures Act (RESPA) disclosures.

2. Changes To Make Compliance Easier for Creditors. A. Reduction in the absolute number of disclosures.

B. Requiring that the Federal Reserve promulgate model forms which would guarantee compliance if filled in properly.

C. Providing that all amendments or interpretations requiring forms changes become effective on October 1 of each year, with at least six months notice.

D. Providing for true tolerances of ⅛ percent for annual percentage rate disclosures and for wider tolerances on complex transactions under regulations of the Board.

3. Changes Affecting Civil Liability Provisions. A. Limiting creditors' civil liability for statutory penalties to only those disclosures regarded as being of central importance.

B. Extending the period during which a creditor can "cure" a violation and avoid civil penalties from 15 days to 60 days after discovery.

C. Providing that "discovery" of errors might be due to examination agency reports without cutting off the time period to cure.

D. Extending "bona fide error" defense to good faith calculation, computer, and printing errors as well as to clerical errors.

4. Changes To Strengthen Administrative Restitution Enforcement. A. Requiring administrative agencies to order refunds when finance charges or APR's are understated and when errors are part of a clear pattern or practice, are the result of gross negligence, or are willful.

B. Providing for some administrative discretion in ordering restitution, except for willful violations.

5. Changes To Clarify Legal Issues. A. Clarification concerning creditor responsible for disclosures on transactions involving more than one institution.

B. Clarification concerning adequate disclosure of security interests.

C. Clarification concerning disclosure of acceleration clauses.

D. Clarification concerning disclosure of right of rescission on certain transactions.

Beyond the specifics of the kinds of changes listed in Table I, the extent of the alterations in the act and regulation indicates some fundamental shifts in regulatory approach. One shift involves a movement away from the concept of full disclosure of everything as a Truth-in-Lending matter. Rather, the new act and draft regulation concentrate on requiring fewer disclosures, especially those believed to be most important to most consumers. The idea behind this change is that beyond these critical disclosures, regulatory burden increases faster than the usefulness of the disclosures to consumers. A second shift involves significant attempts at relieving the most burdensome compliance problems for creditors, especially by providing model forms that will guarantee compliance if used properly. A third shift moves enforcement efforts away relatively from private court suits for civil penalties and focuses enforcement effort on administrative actions by government agencies. This change should help slow the flow of court decisions that has required creditors constantly to be aware of potential changes in disclosure standards and which, on occasion, has produced differing disclosure standards among judicial districts.

2. *Other Changes Proposed.* Besides changes in Regulation Z mandated by the Simplification and Reform Act, the staff draft of revised Regulation Z reflects a large number of other proposed changes, which are listed in Table II. These changes are designed to provide additional simplifications in disclosure procedures so as to provide clearer standards, eliminate complexities, and provide a greater degree of flexibility in a regulation that had become quite inflexible. However, because each of the changes involves a tradeoff between full precise disclosures (which may be complex and difficult to make and understand) and simpler disclosures (that may be less complete or precise even if more understandable), some of the changes may be controversial. Nevertheless, the changes proposed appear consistent with the Congressional mandate for regulatory simplification.

Table II—Areas of Change in Draft Regulation Z Arising From Staff Attempts to Simplify the Regulatory Structure

1. Changes Designed to Provide Clearer Standards Concerning Applicability of Provisions of the Regulation. A. Definition of creditor subject to regulation is make more precise by providing a standard stated in terms of number of annual credits (25, or 5 real estate credits) rather than a standard in terms of "ordinary course of business."

B. Coverage of credit where there is no finance charge is limited to written agreements, thereby excluding informal installment agreements often offered by physicians and other professionals and tradesmen.

C. Definition of "consummation" before which disclosures must be made is made more precise by defining it as the point in time when a contractual obligation is established rather than when a vaguer "economic incentive" to go forward is established.

D. Determination that disclosures be based on legally enforceable obligation rather than on any informal agreement that may be at variance with the enforceable agreement.

E. Determination of which consumer in a joint credit is "primarily" liable and, therefore, must receive the disclosures is made unnecssary by permitting that disclosures be made to any obligor.

F. Exclusion of sellers' points from the finance charge on real estate transactions thereby obviating need to determine whether sale price of property was raised to include sellers' points.

2. Changes Designed to Make Good Faith Disclosures Easier Through Greater Availability of Small Tolerances. A. Provision for tolerance on disclosure of finance charges equal to tolerance for disclosure of annual percentage rates (⅛ of 1 per cent).

B. Provisions for wider tolerance of ¼ of 1 per cent on irregular transactions involving multiple advances or irregular payments.

C. Provision that slight changes in a transaction from good faith estimated disclosures do not necessitate full redisclosure.

3. Changes Designed to Highlight Disclosures Relevant to Credit Decisionmaking. A. Narrowing of definition of security interest that must be disclosed to exclude items such as proceeds of insurance that typically are unrelated to credit decisions but which have contributed to litigation and ambiguity.

B. Limiting the frequency of need for complete redisclosure when terms are changed.

C. Limiting necessity of diclosure on assumption of an obligation to the case of residential mortgages.

4. Changes Designed to Eliminate Complexities. A. Exclusion from disclosure requirements of such transactions as utility "budget plans" and "layaway" plans that have some elements of a credit transaction but which, strictly speaking, are not credit.

B. Elimination of three-day waiting period on credit secured by residence if consumer certifies in writing (preprinted forms prohibited) that a bonafide personal financial emergency exists.

C. Elimination of need to consider compensating balances in annual percentage rate calculation.

5. Changes Designed to Allow Creditor Flexibility in Preparing Disclosures to Fit the Nature of the Transaction in Question. A. Allowing the creditor in a variable rate transaction to prepare the required example in a way that fits the specific transaction.

B. Allowing the creditor in a transaction involving multiple credit advances to prepare disclosures that fit the specific transaction.

C. Allowing creditors flexibility either to include or exclude in disclosures any cash rebates offered by the creditor or a manufacturer.

D. Allowing creditors more flexibility in showing repayment schedules in credit advertising.

3. *Evaluating the New Regulatory Structure*

Ultimately, the regulatory structure associated with Truth in Lending, like the regulatory and administrative apparatus associated with other consumer-oriented legislation, should be evaluated in terms of its contributions to (or detractions from) (1) market efficiency and (2) consumer protection. However, in the case of TIL these criteria are especially closely related. Truth in Lending is largely an information protection, and the main purpose of information protections is to improve the functioning of markets. Unlike behavioral or market protections (like Equal Credit Opportunity) that involve direct governmental interventions to affect market behavior of participants (especially businesses), the impact of information protections is more indirect. Instead of directly altering behavior, information protections assist consumers by improving the quality of efficiency of markets.

Markets are, of course, mechanisms for exchanging goods, services, or resources for value; and the concept of efficiency refers, in a sense, to the smoothness of the exchange mechanism. The concept has two components. The first, operational efficiency, concerns the mechanics of the transfer process itself. In particular, operational efficiency refers to the ability of a market to facilitate the transfer of goods or resources without loss of real resources to the transfer mechanism. Viewed in this manner, Truth in Lending and Regulation Z certainly introduce a measure of operational inefficiency into consumer credit markets by raising creditors' costs that must be paid by consumers. However, this is only half of the question.

The second component of market efficiency is allocational efficiency. Allocational efficiency refers to the extent to which markets allocate resources to their best uses. It has both a supply side and a demand side. From the supply side the question for TIL is whether the regulatory structure interferes with market allocation of resources to areas of highest return for a given risk. In contrast, from the demand or consumer side (the focus of this analysis) the question is whether the TIL regulatory structure helps consumers *obtain* resources at least cost for a given level of credit risk. Stated in this manner the relationship between market efficiency and consumer protection is more apparent: The concept of efficiency means best value for expenditure; this is precisely the intent of an information protection.

Unfortunately, because of the number of differnt kinds of costs involved, the amount of operational inefficiency introduced by the TIL regulatory structure is very difficult to measure. As a result, little statistical information is available and no broad-based cost analyses have been prepared. Nevertheless, despite these gaps in the record, it is still possible to indicate some cost-causing aspects of the regulatory apparatus and to make some comparisons of the old regulatory environment with the new. Comment is specifically requested on (1) current costs of compliance with Truth in Lending and Regulation Z; (2) expectations concerning likely impact of the new regulation on costs; and (3) expected start-up costs associated with change over to the new regulation.

A number of kinds of costs are incurred by creditors (and ultimately by consumers) as a result of Truth in Lending. In addition, each type of costs recurs (to a greater or lesser extent depending on the situation) whenever changes are made in the act or regulation. Before passage of the Simplification Act, frequent changes and interpretations of the regulation caused major compliance problems for creditors. Since one purpose of the new act is to reduce frequency of changes in the future, it should reduce costs in the long run. Nevertheless, to achieve these long-run advantages, substantial start-up costs will be incurred as the entire regulatory structure is changed. Delaying the effective date for one year and allowing transition to the new methods at any time during the year should reduce start-up costs relative to those of a more rapid implementation schedule.

A first group of costs associated with Truth in Lending is legal expenses. Legal expenses arise from a number of sources and problems. One source is the cost of designing disclosure forms that suit the credit programs of individual creditors but which also comply with Regulation Z. On some kinds of transactions (for example, large secured credit sales) required disclosures were quite complex prior to the Simplification Act, so legal preparation had to be quite detailed. Reduced disclosure requirements and issuance of model forms should help reduce costs in this area in the future. Likewise, the new regulatory structure should reduce the legal expenses of constant re-evaluation of disclosures, to the extent the act is successful in reducing frequency of changes and interpretations.

Another source of legal costs is litigation expenses. Truth in Lending has produced a substantial number of court cases, each of which requires legal attention. Unreported are the number of cases where some accommodation or settlement is reached without the formality of filing and litigating a suit. Expenses can be sizeable in either case, especially if plaintiffs's legal expenses are awarded as well. The simplified Truth-in-Lending Act and Regulation Z should reduce legal expenses of these kinds. Because compliance with the act has been made easier, legal expenses for both analysis and litigation should eventually be reduced, possibly after a spurt associated with implementing the new requirements.

A second TIL cost is the cost of forms and printing. After design, complying forms typically are printed by a commercial printer. As a result, any change in requirements necessitates not only new legal analysis, but new printing expenditures as well. Furthermore, often overlooked, a change in forms requires that all obsolete forms be retrieved or otherwise destroyed. For a large creditor with multiple branches and possibly hundreds or thousands of employees, this requirement can involve substantial effort. Again, the new regulatory structure should reduce costs in this area. Besides minimizing the need and likelihood of rapid changes in disclosure requirements, the new rules specify that forms changes will be required no more than once per year. In 1977 the Commission on Federal Paperwork estimated this provision alone would reduce costs by $600 million annually.[7]

A third cost is the cost of employee training. If legal requirements change frequently and employees must be trained and retrained to use new forms correctly, substantial costs may result. Partially in response to this problem, but also for other reasons of management control, some creditors have instituted automated computer-processed TIL disclosure forms in recent years. Rather than relying on employees to fill in changing disclosure forms correctly, some creditors have programmed their computers to supply disclosures through terminals in branches or stores. However, computers must be purchased and programmed, so computer-related expenses constitute a fourth group of TIL costs. Actually, this category of costs should probably be expanded to encompass all kinds of calculating-disclosing aids including charts, tables, and calculators as well as computers. Since, to some extent, there is a tradeoff between sophistication of employees and extensiveness of calculation aids, training expenses and calculating-computing expenses might be added together in evaluating TIL. Nevertheless, regardless of how they are apportioned, costs associated with training and calculating should be reduced by the new regulatory structure, after an initial start-up phase.

Other TIL-related costs include the actual costs of disclosing required information and the costs of record retention. Actual costs of disclosing rates and other information are probably not very great on closed-end credit, given that terms must be negotiated or specified and contractual documents are prepared and signed anyway. Costs of disclosing on standard types of contracts consist of calculating the necessary information, placing it on the disclosure forms and handing the forms to consumers. Once the necessary legal judgments are made, forms prepared, employees trained and computers programmed (or charts and tables purchased) disclosures are not especially difficult or time consuming, as long as no changes are made in the procedures. On open-end credit finance charges must be disclosed on periodic statements (usually monthly); but, typically, the calculations would be made anyway since the disclosure statement also constitutes the periodic billing statement. The new act and regulation do not make substantive changes in the methods of actually making disclosures and so substantial cost savings are not expected from this source. Likewise, the new regulatory structure retains the earlier requirements on record retention (for compliance purposes), although retaining files can be costly. In 1977 the Commission on Federal Paperwork estimated that storage, filing, and clerical expense of maintaining files could amount to 16 cents per file. However, since creditors would be expected to keep files for a time anyway, not all of this expenditure can be attributed to TIL or other regulations. Nevertheless, Regulation Z requires that copies of disclosure statements be retained for 24 months which is beyond the closing date of many accounts. This requirement is not changed by the new regulation.

In sum, the new TIL regulatory structure should lead to lower compliance costs, thereby improving operational efficiency of credit markets. To the extent these gains can be achieved without sacrificing consumer protections, the new regulatory environment should produce a net gain for society as a whole through a more efficient market. However, before this conclusion is reached it is necessary, first, to examine TIL as an information protection. This topic forms the subject matter of Part IV.

IV. Truth in Lending as an Information Protection

1. *Potential Evaluative Criteria*

In evaluating the new Truth in Lending regulatory structure as an information protection, possibly the foremost concern is the need for an appropriate criterion or standard. The goal stated by Congress in Section 102 of the Act, avoidance of the "uninformed use of credit," is undoubtedly the Act's central purpose and a goal consistent with market efficiency, but measurement is subject to severe definitional and methodological difficulties. As a result, proxies are needed. Examination of the behavioral science literature as well as Congressional hearings and statements and the literature on Truth in Lending itself reveals that a large number of consumer-protection goals have been suggested as standards for TIL. Thirty-nine possible goals for Truth in Lending in nine separate categories are listed in Table III. There are probably also other goals that might be added to the list. However, the length of this table reveals the same difficulties in evaluating TIL as a consumer protection and the reason why simple tests are probably inadequate. Nevertheless, a few general principles might be stated.

Table III.—Goals of Truth in Lending

I. General Philosophical or Educational Goals

1. Satisfy Consumers' Right to Know
2. Enhance Consumer Education
3. Enhance Consumers' General Understanding of the Credit Process
4. Promote Long-Term Rise in Consumer Sophistication
5. Promote the Informed Use of Credit
6. Promote Wiser Credit Use

II. Goals Associated with Improving Consumer Decisionmaking

7. Reduce Credits Search Costs
8. Simplify Information Processing
9. Improving Consumers' Ability to Make Comparisons[1]
10. Enable Consumers to Match Products and Needs
11. Enable Consumers to Decide Between Using Credit and Using Liquid Assets[2]
12. Enable Consumers to Decide Between Using Credit and Delaying Consumption[2]
13. Show Consumers Where Search Can Be Beneficial

III. Cognitive Goals: Awareness and Understanding

14. Improve Awareness of Credit Costs
15. Improve Awareness of Non-Cost Credit Terms
16. Improve Awareness of Differences Among Classes of Institutions
17. Improve Consumers Understanding of the Relationships Among Credit Cost Terms

IV. Behavioral Goals

18. Encorage Credit Shopping

V. Attitudinal Goals

19. Improve Consumer Satisfaction
20. Improve Consumer Confidence

VI. Credit Market Goals

21. Enhance Competition in Consumer Credit Markets

[7] Commission on Federal Paperwork. *Consumer Credit Protection* (Washington: Government Printing Office. 1977).

[1] Referred to as the "Shopping Function" by the National Commission on Consumer Finance.

[2] Reffered to as the "Descriptive Function" by the National Commission on Consumer Finance.

22. Drive Out High-Cost Producers
23. Encourage Industry to Reform
24. Improve Credit Market Products
25. Discourage Risk Shifting by Institutions
26. Discourage *In Terrorem* Boilerplate Clauses in Contracts
27. Provide Vehicle for Legal Reforms
28. Protect Legitimate Business from Unethical Competition

VII. Institutional Control Goals

29. Promote Control of Institutions Through Compliance Requirements
30. Improve Consumers' Bargaining Position Relative to Institutions
31. Provide Defenses for Consumers
32. Provide Leverage for Hard-Pressed Debtors

VIII. Macroeconomic Goals

33. Enhance Economic Stablization

IX. "Behavioral" or "Market Protection" Goals

34. Require Procedures for Credit Card Billing Error Resolution
35. Provide Protections for Consumer Leasing
36. Provide "Cooling Off" Period for Credit Secured By Residence
37. Provide "Cooling Off" Period for Credit Negotiated in Consumer's Home
38. Provide for Limited Liability on Lost or Stolen Credit Cards
39. Eliminate Unsolicited Credit Cards

First, TIL as a consumer protection cannot be evaluated fully be examining only a single behavioral measure like credit shopping. Behavioral goals are only one of nine categories in Table III, and encouraging shopping is only one of 39 goals listed. Consequently, evaluating TIL on shopping alone, or for that matter on any single criterion, is likely to produce an incomplete analysis of the impact of this information protection. As a corollary, if it is not appropriate to evaluate TIL on only one criterion, then it seems inappropriate to recommend wholesale changes in the protection based on a single criterion. At a minimum any proposed changes should be evaluated in terms of the likely effects on a variety of goals. Again, the shopping criterion provides a useful example; it simply may not be reasonable to make wholesale changes in the regulatory structure to encourage shopping unless either the changes simultaneously encourage other goals as well or the changes can be made at small cost. If costs are large or impacts on other goals are small, then there exists the possibility of achieving small gains in allocational efficiency at the expense of large losses of operational efficiency. This could produce a net loss for society as a whole.

Second, some goals do not suggest any measurable evaluative criteria and must be evaluated indirectly. Probably the general philosophical and educational goals in Category I of the table offer the best examples. The six goals listed there are almost universally recognized as important aspects of TIL, but they appear too general for direct analysis and invite only indirect conclusions. However, it might be noted that if two disclosure programs each appear to satisfy these general goals but one also appears to satisfy other goals as well, or to satisfy the general goals at lower cost, then this method is preferable, other things equal.

Third, while some goals do offer evaluative criteria, the criteria may differ among individuals making it difficult to draw general conclusions. Many of the goals in Category II of the table illustrate this phenomenon. For example, goal number 10, improved ability to match products and needs, might be examined by studying choices made in the marketplace. The problem is that consumers' needs differ and, consequently, so will the choices made even under conditions of perfect information. Likewise, consumers faced with deciding between using credit and paying cash (goal number 11) will not all reach the same conclusion. In a world of perfect information some people will choose cash and others credit, depending on their individual circumstances. As a result, a simple criterion related to likelihood of taking one behavioral path or the other cannot be expected to produce useful analytical results.

Fourth, some goals may be more costly than others, especially if special attempts are made to achieve them without regard to costs. Encouragement of credit shopping (number 18) has already been mentioned as a possible example, but there are others as well. One is number 17, improving consumers' understanding of the relationships among credit cost terms. Much of the complexity, litigation, and costliness of the original TIL Act and Regulation Z arose, in a sense, out of attempts to satisfy this goal with extensive, detailed TIL disclosure statements. Possibly a better approach might have been to consider whether the details were necessary to achieve the other 38 goals or whether a simpler, less costly approach might have been sufficient.

2. *Evidence on the Effects of Truth in Lending.*

Unfortunately, there is relatively little direct evidence available about the impact of TIL on most of the goals listed in Table III. Furthermore, since evidence must typically be gathered by surveys at discrete points in time, the evidence is always subject to potential methodological problems, particularly that alternative explanations of the results are available.[8] Nevertheless, it is still possible to suggest some general conclusions concerning TIL as an information protection.

While little can be said definitively about the impact of TIL on the general philosophical and educational goals listed in Group I of Table III, as a concept it seems likely that TIL disclosures have fostered the general goals of satisfying the consumer's right to know and enhancing general educational aims. Similarly, it seems that consumers' general understanding of the credit process has probably been enhanced by TIL, and the law has probably contributed to increasing consumers' general sophistication over the long term. TIL has probably also supplied the tools for informed use of credit and wiser use of credit by consumers. Although these latter goals might seem quite similar at first glance, they are actually quite different since the second involves a value judgment concerning what is wise. To use an analogy from public health, it seems likely that required disclosures of warnings by the surgeon general about smoking have contributed to informed use of tobacco, although possibly not to wiser use among those still smoking. In the tobacco case the value judgment is fairly obvious but in the credit case it may be less so. Nevertheless, it seems likely that TIL has contributed to both more informed and wiser credit use, if only because it has provided necessary tools in the form of standardized disclosures and terminology.

In terms of this first group of TIL goals, the new regulatory structure provided by the Simplification Act and revised Regulation Z should, on balance, prove beneficial. The new structure should be as effective as the old in enhancing these general TIL goals, but it seems likely it will be able to do so at lower operational cost. As a result, the net effect appears positive, since the beneficial aspects of general consumer protection have not been sacrificed, but they will be achieved at lower cost to suppliers, after an initial costly phase-in.

The second group of goals involve individual consumers' decision processes. Studying the imnpact on

[8] For discussion of methodological issues see Lynn W. Phillips and Bobby J. Calder, "Evaluating Consumer Protection Programs: Part I, Weak But Commonly Used Research Designs," *Journal of Consumer Affairs*, Winter 1979, and Lynn W. Phillips and Bobby J. Calder, "Evaluating Consumer Protection Laws II: Promising Methods," *Journal of Consumer Affairs*, Summer 1980.

these goals is especially difficult since decision making criteria vary among consumers. However, as with the first group of goals, it seems likely that the new regulatory environment is an improvement on balance over the old because consumer protections in this area have not been sacrificed, even though costs may be lowered in the future. Probably of primary importance is TIL's requirement that rates be calculated in identical fashion regardless of credit source or type, a requirement that is retained in the new structure. This should be important, for example, in satisfying goal number 10, enabling consumers to match products and needs. Likewise, decisions about using cash or delaying consumption rather than using credit should be facilitated with standardized credit cost calculations available. Although survey evidence indicates that relatively few credit users are influenced by disclosures in their decision to take on debt,[9] some unanswered questions may be as important. These include the extent to which cash buyers are dissuaded from using debt by its cost and the extent to which consumers' attention to and sensitivity to finance rates has changed over time. Regardless of answers to these questions, it seems that TIL has provided consumers with the necessary tools, for whatever purpose they want to use them.

Most research on the effects of TIL has been concentrated on the third group of goals in table I (the Cognitive Goals) and especially on awareness of credit costs (goal number 14). Research attention has probably been focused in this area for two reasons. The first is that these goals, especially awareness of credit costs, offers a convenient operational evaluative criterion for testing. As a result, it is possible to draw conclusion without some of the kinds of complications associated with evaluating other goals. The second reason is the reasonable contention that cognition logically precedes use of information for decision making, and so evidence of awareness is an important preliminary evaluation. The argument is that since cognition precedes use, there must be awareness before use of information can be expected. Although evidence of awareness does not, by itself, demonstrate that information will be used, lack of awareness probably indicates that information cannot be used. Consequently, evidence of lack of impact of TIL on awareness could be taken as an indication the law had little impact in other areas either.

Surveys of consumers have indicated increasing levels of awareness of percentage rates of charge on credit transactions since implementation of Truth in Lending in 1969. Using an operational definition of awareness established by staff of the National Commission on Consumer Finance, surveys have revealed a sharp increase in awareness in the first 15 months of Truth in Lending and continuing gains afterward.[10] By 1977 levels of rate awareness reached 54 per cent for closed-end credit and 65 per cent and 71 per cent for retail revolving credit and bank credit-card credit, up from 14 per cent, 35 per cent, and 27 percent, respectively, in 1969. Although many factors undoubtedly affect credit knowledge, including gradually higher educational levels over time, it appears reasonable to conclude that TIL has focused attention on percentage rates and contributed to the sharp increases in awareness.

In contrast, despite changes in awareness of percentage rates since 1969, available consumer surveys indicate that credit shopping by consumers is not especially common. For example, a nationwide survey in 1977 found that only about one quarter of those with outstanding closed-end credit accounts had tried to obtain information about other creditors or credit terms before obtaining the credit.[11] Furthermore, a majority of those with outstanding closed-end credit indicated that familiarity with the creditor or prior good experience was the primary reason for obtaining credit from the particular creditor they chose. However, lack of shopping does not necessarily indicate unreasonable or irrational behavior. On the contrary, failure to shop may indicate an awareness of costs on the part of the consumer and may reflect the view that further shipping is unwarranted. Consumers may be wrong in their judgments, of course, but it does not seem that, by itself, failure to shop indicates a failure of TIL. Probably more important for TIL evaluation are the questions whether the regulatory structure increases cost awareness and whether it permits effective shopping, if desired. The first of these questions has already been answered affirmatively, and the second answer seems positive as well. By establishing a consistent unit price and standards of terminology, TIL permits consumers to shop for credit to whatever extent they feel is appropriate.

The fifth group of TIL goals concerns improving consumers' confidence in and satisfaction with the credit process. It seems likely that consumers, knowing that creditors must disclose certain costs and terms accurately under the watchful eye of regulatory authorities, might increase their confidence in the integrity of an otherwise complex transaction. This confidence could produce consumer benefits beyond any immediate specific uses consumers make of the disclosed information. However, since obtaining these benefits does not require any specific uses of the information disclosed, this group of goals argues for a simple disclosure scheme. Rather than a highly technical regulation with strict requirements, this group of goals could be addressed with simple methods. Thus, on balance, the new regulatory structure should provide net benefits in this area. Since benefits in the form of improvements in confidence and satisfaction with the credit process should not be reduced under the new regulatory structure, but costs should be reduced in the long run, net benefits should result.

Limited longitudinal survey evidence indicates that consumers' attitudes toward credit have improved since passage of the original Truth in Lending Act. Furthermore, attitudes have improved more rapidly during the years 1967–77 than 1959–67.[12] Clearly, however, changes in attitudes over time cannot be attributed solely to any piece of legislation. Income growth and employment stability over time for many members of the public may partly explain improved attitudes toward credit use. Inflation, which tends to reward early purchases of goods and to penalize accumulations of savings in the form of liquid assets, may also affect attitudes toward credit. Nevertheless, there remains the possibility that consumer protection regulations have contributed to overall increases in consumers' satisfaction with the credit process. Since any gains in this area might be achieved just as well by simple rules, though, this group of goals offers arguments for regulatory simplification.

The sixth group of goals is the credit market goals, Taken together, these goals refer to improvements in credit markets that might result from a generally more competitive environment. These include, all other things equal, such things as lower market prices, discouragement of unfavorable contract devices that might

[9] See George S. Day and William K. Brandt, *A Study of Consumer Credit Decisions: Implications for Present and Prospective Legislation* (Washington, Technical Studies of the National Commission on Consumer Finance, Vol. I, Government Printing Office, 1973).

[10] See Thomas A. Durkin and Gregory E. Elliehausen, *The 1977 Survey of Consumer Credit* (Washington: Board of Governors of the Federal Reserve System, 1978).

[11] *Ibid.*, chapter 5.

[12] *Ibid.*, chapter 10.

need to be disclosed, and protection of legitimate businesses from unethical competitors that might employ deceptive pricing in the absence of TIL. These, of course, were important original goals of Truth in Lending and were extensively discussed in Congressional hearings before passage of the Act.

As with the other groups of goals, evaluating the credit market goals is difficult because of competing explanations for any market changes and lack of specific data. Other things equal, a requirement that businesses provide pricing information calculated in a uniform manner should make markets more competitive. However, the magnitude of any effect depends on answers to a number of questions. One question concerns the importance consumers attach to the information disclosed. In the area of credit terms, available evidence suggests that consumers regard cost terms as most important.[13] As a result, requiring disclosure of cost-related terms would be consistent with improving market competitiveness. Obviously, this does not imply that disclosures need be complex or difficult to prepare. A second question concerns current competitive conditions in consumer credit markets. If markets are already fairly competitive, then the gains from implementing or changing Truth in Lending to improve competitiveness are likely to be small. Evidence on consumer credit competition before Truth in Lending is scarce, although markets were assumed to be less than perfectly competitive.[14] In contrast, limited more recent evidence suggests that consumer credit markets are fairly competitive.[15] Although the precise impact of Truth in Lending in promoting competition cannot be determined, this finding may indicate that further changes in TIL are unlikely to produce substantial additional benefits from a more competitive market. Any benefits already provided by TIL, though, are unlikely to be lost under the new regulatory structure.

The seventh group of goals in Table I, the Institutional Control Goals, is probably the group most directly affected by the new regulatory structure. As outlined previously, the Senate Banking Committee's stated purposes in drafting the Truth in Lending Simplification and Reform Act included making compliance easier for creditors and strengthening administrative restitution enforcement authority. The latter purpose encourages goal number 29, but the former may discourage the others, especially numbers 31 and 32. It appears that the goals of providing defenses for consumers and leverage for hard-pressed debtors were not part of the original plans of Congress in 1969. Instead, they arose from the complexity of the regulatory structure that made it difficult for creditors always to be in complete technical compliance. Creditors instituting collection actions were resisted occasionally by debtors alleging Truth in Lending violations. Such actions could result in settlements or judgments for the debtor that might reduce or eliminate the debt. Under the new regulatory structure such situations should develop less often. Apparently believing that private enforcement of Truth in Lending had contributed to its growing complexity, Congress de-emphasized private enforcement in the Simplification Act and increased the importance of administrative enforcement actions. This change should reduce the importance of TIL as a defense or a device to obtain leverage over creditors and re-emphasize the original goals of Truth in Lending as an information protection.

The eighth category of goals, the Macroeconomic Goals, was discussed extensively in Congressional hearings before passage of the original act, but has received little attention since. The argument made in the Congressional hearings was that disclosure of finance charges and annual percentage rates would discourage consumers from using credit during an economic boom and encourage credit use in a depression, other things equal. Taken together these effects would encourage economic stabilization by helping dampen business cycles.

The argument that availability of credit cost information over the course of the business cycle might improve economic stabilization is consistent with economic theory. The question is the magnitude of the effect which depends on the degree of fluctuation in consumer credit rates, consumers' knowledge of and sensitivity to credit cost fluctuations, and the importance of other factors such as income changes or changes in expectations. If fluctuations in rates are small, if sensitivity to costs is low, or if the impact of other factors is quantitatively larger, then disclosure of rates would not have much impact on stabilization. Answers to these difficult questions are not essential for reviewing the new Truth in Lending regulatory structure because TIL has many goals of which macroeconomic stabilization is one and clearly not the most important. Nevertheless, it is possible that regulatory rigidity in the past has limited creditors' willingness to change credit terms along with economic conditions. The new regulation should help minimize this problem by making compliance easier.

The final group of goals, the "Behavioral" or "Market Protection" Goals, do not generally concern Truth in Lending as an information protection; consequently, little will be said about them here. Furthermore, the new regulatory structure makes few changes in the market protection functions of TIL, and so potential impacts are not as great as they are in other areas.

V. Conclusion

In sum, it appears that the new regulatory structure resulting from passage of the Truth in Lending Simplification and Reform Act should result in net public benefits. Review of an extensive list of goals of TIL reveals that none of the original goals of the act will be affected adversely. However, consumer protections provided by the act ultimately should be available at less operational cost under the new structure, following start-up adjustment. An improvement in operational efficiency with no loss of allocational efficiency should lead to an improvement in the quality of the market, the goal of any information protection.

By order of the Board of Governors of the Federal Reserve System, November 28, 1980.

Barbara R. Lowrey,

Assistant Secretary of the Board.

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[13] *Ibid., chapter 4.*

[14] See National Commission on Consumer Finance, *Consumer Credit in the United States: The Report of the National Commission on Consumer Finance* (Washington, Government Printing Office, 1972).

[15] See Gregory E. Boczar, The Evidence on Competition Between Commercial Banks and Finance Companies, *Journal of Bank Research*, Summer 1975 and Gregory E. Boczar, "Competition Between Banks and Finance Companies: A Cross Section Study of Personal Loan Debtors," *Journal of Finance*, March 1978.