FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 9298
May 25, 1982]

OFFICIAL STAFF COMMENTARIES ON TRUTH IN LENDING AND CONSUMER LEASING

— Proposed Revision of Regulation Z Commentary
— Adoption of Regulation M Commentary

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

The Board of Governors of the Federal Reserve System has proposed a revision of its Official Staff Commentary on Regulation Z, "Truth in Lending," and has adopted an Official Staff Commentary on its Regulation M, "Consumer Leasing."

Proposed Regulation Z Commentary

Following is the text of a statement issued by the Board announcing its proposal regarding the Regulation Z staff commentary:

> The Federal Reserve Board staff has placed on the record for comment a proposed updating of its Commentary on the Board's Regulation Z.
>
> The staff asked for comment by June 28, 1982.
>
> The Commentary, published last October, interprets Regulation Z, as revised to conform to the Truth in Lending Simplification Act of 1980. Creditors may comply at present with revised Regulation Z and Commentary, but compliance does not become mandatory until October 1, 1982, when the revised statute becomes mandatory. The effective date of the Commentary revisions will be not earlier than April 1, 1983, in order to give creditors time for adjustment of forms and procedures.
>
> The proposed updating of the Commentary generally gives creditors more flexibility in making disclosures, while preserving basic consumer protections. As with the Commentary itself, the proposed revisions of it are designed to provide general guidance in applying Regulation Z to specific types of transactions. Compliance with the Commentary is regarded as compliance with Regulation Z on matters covered by the Commentary.
>
> The Commentary addresses, among other things, what base rate may be used in disclosures required for variable-rate open end credit plans and proposes a change that would facilitate the use of a creditor's prime rate as the base rate in such credit arrangements.

Enclosed is a summary of the proposed changes in the staff commentary. The full text is published in the *Federal Register* of May 13, 1982; copies will also be furnished upon request directed to our Circulars Division. Comments on the proposal should be submitted by June 28, 1982 and may be sent to our Consumer Affairs and Bank Regulations Department.

(OVER)

Regulation M Commentary

Following is the text of a statement issued by the Board announcing the adoption of its Regulation M staff commentary:

> The Federal Reserve Board staff has made public in final form a Commentary on the Board's Regulation M (Consumer Leasing).
>
> The Commentary takes the place of outstanding individual staff and Board interpretations of the regulation (which formerly was part of Regulation Z — Truth in Lending) and applies and interprets the requirements of Regulation M. Good faith compliance with the Commentary affords protection from civil liability under the Truth in Lending Act.
>
> Compliance with the Commentary becomes mandatory October 1, 1982. Until then, lessors may comply with Regulation M or with the previous version of the Board's rules on consumer leasing that was contained in Regulation Z.
>
> The Commentary attempts to make more general interpretations and applications than has been the case with previous interpretations, and in that way to provide adequate guidance for compliance with the regulation while avoiding unnecessary detail. It adopts the substance of most previous individual leasing interpretations. The Commentary will be updated periodically.
>
> The Commentary in final form differs in numerous instances from proposals for it published in October 1981. A number of these differences may be found in the introductory material to the Commentary that is attached.
>
> The complete text of the Commentary may be obtained from the Federal Reserve Board and the Federal Reserve Banks.

Enclosed is a summary of the staff commentary. The full text is published in the *Federal Register* of May 13, 1982 and will be furnished upon request directed to our Circulars Division. Copies in printed form will be sent to depository institutions in this District as soon as they become available. Questions on the commentary may be directed to our Consumer Affairs and Bank Regulations Department (Tel. No. 212-791-5914).

ANTHONY M. SOLOMON,
President.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Proposed Official Staff Commentary Update

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: In accordance with Appendix C to 12 CFR Part 226, the staff of the Federal Reserve Board is publishing for comment a proposed update to the official staff commentary to Regulation Z (Truth in Lending), as revised effective April 1, 1981. The commentary applies and interprets the requirements of the revised Regulaton Z to open-end and closed-end consumer credit and is intended to substitute for individual Board and staff interpretations of the regulations.

DATE: Comments must be received on or before June 28, 1982.

ADDRESS: Comments should be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue, NW, Washington, D.C. between 8:45 a.m. and 5:15 p.m. To aid in their consideration, comments should include a reference to TIL-1, and discussion of each section should begin on a separate page. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

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

Subpart A—Gerald Hurst, Rugenia Silver.

Subpart B and Appendices—Ruth Amberg, Jesse Filkins, Lynn Goldfaden, Gerald Hurst, John Wood.

Subpart C and Appendices—Clarence Cain, Rugenia Silver, Susan Werthan, Claudia Yarus, Steven Zeisel.

SUPPLEMENTARY INFORMATION: (1) *General.* Effective October 13, 1981, an official staff commentary was published (46 FR 50288, Oct. 9, 1981) to interpret Regulation Z, as revised effective April 1, 1981. Creditors now have the option of complying with revised Regulation Z and the commentary, but compliance does not become mandatory until October 1, 1982 (Pub. L. 97-110, December 26, 1981). The commentary is designed to provide general guidance to creditors in applying the regulation to specific transactions. Although each unique credit plan cannot be individually addressed in the commentary, periodic updates will provide the vehicle for additional staff interpretations that may be necessary as new questions arise.

In revising the commentary, an attempt is being made to avoid revisions that would require modifications to forms that have been prepared based on the existing regulation and commentary. The types of changes being proposed generally give creditors more flexibility in making disclosures, while preserving basic consumer protections. Changes generally will be made only when necessary to respond to significant questions that have arisen since the commentary's issuance or to clarify ambiguous language. Purely editorial changes are being avoided. However, because this is the first update to the commentary, some technical and editorial changes have been necessary in order to expedite adjustment to the commentary's new material and format. Although in most cases the location of comments has not been affected, some have been renumbered as a result of the deletion or addition of material.

Certain conventions have been used to highlight the revised language in the commentary. New language is highlighted by bold-faced arrows, while language that has been deleted is set off with brackets. Although the inclusion of existing commentary language adds to the length of this document, this format seems to be the most helpful way of pointing out proposed changes.

Comments must be received by June 28, 1982. In order to expedite analysis of the comments, commenters are requested to identify comments by section and paragraph numbers and to begin discussion of each section on a separate page. If comments are received on issues not raised by the proposed revisions, these comments would most likely be considered for possible inclusion in the next commentary update.

Final revisions will be published in the **Federal Register;** it is anticipated that final publication will be no later than the beginning of September. Although creditors will be able to rely on the revisions at that time, the applicability of the revisions will be optional until April 1, 1983, which will be specified in the final rule document. The later date will be provided to minimize any difficulties that creditors may experience in adjusting to the revisions.

(2) *Proposed Revisions.* Following is a brief description of the revisions contained in the commentary update.

Introduction

Comment I-3 would be amended to reference the regulation's effective date of October 1, 1982, in accordance with Pub. L. 97-110 (December 26, 1981).

Subpart A—General

Section 226.2—Definitions and Rules of Construction

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

Comment 2(a)(3)-6 would be added to explain the Board's recent amendment to § 226.2(a)(3) of the regulation (47 FR 7391, Feb. 19, 1982) dealing with real estate brokers.

2(a)(13) "Consummation"

Comment 2(a)(13)-1 would be revised to show that consummation may occur when the parties enter a commitment agreement that binds them to specific credit terms if under state law a contractual relationship is created. This revision should also ensure that consummation will occur no later than the time a note or contract is signed.

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

Comment 2(a)(23)-2 would be revised to make clear that any portion of the finance charge paid at closing or settlement is considered a prepaid finance charge.

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

Comment 2(a)(24)-1 would be revised to add § 226.20(b) to the list of provisions using the term "residential mortgage transaction." Its omission was inadvertent.

2(a)(25) "Security Interest"

Comment 2(a)(25) would be revised to permit creditors at their option to disclose certain interests as security interests when uncertainty exists as to whether a particular interest is one of the excluded interests.

Section 226.4—Finance Charge

4(b) Examples of Finance Charge

Comment 4(b)(9)-3 would be added to explain the "regular price" definition in amended section 103(x) of the act and its relationship to cash discounts offered under section 167(b) of the act. The comment specifically discusses the displaying of prices for motor vehicle fuel.

4(c) Charges Excluded from the Finance Charge

Comment 4(c)(7)–1 would be revised to state that a charge for a lawyer's attendance at the closing is not a finance charge if the attorney attends to complete the documents.

4(d) Insurance

Comment 4(d)–11 would be added to clarify the concept of initial term of insurance coverage and to permit the initial term to be considered one year if the creditor is uncertain of the term.

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of Disclosures

Comment 5(a)(2)–1 would be revised to include additional examples of the application of the "more conspicuous" rule. These examples would clarify the rule; no substantive changes are intended.

5(b) Time of disclosures

Comment 5(b)(1)–1 would be revised to explain more clearly when initial disclosures are timely if the plan involves an initial fee that is paid before the initial disclosures are given, or if the plan involves an advance made at the time that the consumer is given the initial disclosures.

5(c) Legal Obligation

Comment 5(c)–1 would be revised to clarify the meaning of the term "legal obligation." Comment 17(c)(1)–1, which contains a discussion of legal obligation for closed-end credit transactions, would add a sentence to show the effect of certain previous court decisions on disclosures. This issue arises in part because of the requirement that closed-end disclosures be segregated from other information, a requirement that does not exist for open-end credit. The staff solicits comment on whether a companion provision for open-end credit should be added.

5(d) Multiple Creditors; Multiple Consumers

Material that was inappropriate for commentary treatment would be deleted from comment 5(d)–1.

Section 226.6—Initial Disclosure Statement

6(a) Finance Charge

Comment 6(a)(2)–2 would be revised in its description of the types of open-end credit programs for which the creditor's initial disclosure of planned rate changes excuses the creditor from the general requirement to give notices when the rate increases according to the disclosed plan. The current commentary provides that creditors may avoid these notices after giving appropriate disclosures in plans in which the rates follow an index that is "readily verifiable by the borrower and beyond the control of the lender."

A number of questions have arisen as to the interpretation and purpose of the current commentary language. In particular, some creditors have raised concerns about programs that would use certain internal rates as the index and therefore not meet the criterion that the index be beyond the lender's control. These creditors have noted that tying the rate to their commercial lending rate or to rates paid on savings instruments is a customary practice. The proposal reflects these concerns, while at the same time continuing to provide guidance on the types of rate increases for which additional disclosures may be needed.

6(b) Other Charges

Language would be added to comment 6(b)–2 to provide that a charge for submitting as payment a check that is later returned unpaid would not be another charge.

Section 226.7—Periodic Statements

7(b) Identification of Transactions

Comment 7(b)–1 would be revised to clarify that the listed ways for a creditor to identify transactions for multifeatured plans are merely examples of acceptable arrangements.

7(c) Credits

Comment 7(c)–3 would be revised to clarify when additional identification of dates is needed, and also that no specific terminology would be required for these date identifications.

7(e) Balance on Which Finance Charge Computed

Comment 7(e)–2 would be revised by indicating that the exception permitting the creditor to disclose one combined balance when split rates (or "break rates") are applied does not extend to the case in which split rates are applied to each day's balance. This change would return to the position under previous Regulation Z, and correct the inadvertent reference in current comment 7(e)–4. That reference permitted a combined balance, which would not allow verification of the finance charge attributable to periodic rates.

The last sentence of current comment 7(e)–4 would be deleted, and incorporated in comment 7(e)–2.

Comments 7(e)–4, 5, 6, and 7 of the current commentary would be redesignated as comments 7(e)–5, 6, 7, and 8, and current comment 7(e)–8, which deals with the disclosure of the periodic rate balance amount in multifeatured plans, would be redesignated as comment 7(e)–4.

Comment 7(e)–4 (current comment 7(e)–8) would be revised to give more complete guidance on when separate balances must be disclosed when a plan involves different features.

Comment 7(e)–9 would be added to clarify that the creditor could explain its balance computation method only once, even if it chooses to disclose more than one balance computed by that same method.

7(g) Annual Percentage Rate

Comment 7(g)–2 would be expanded to clarify that, in multifeatured plans, the creditor may give separate annual percentage rate disclosures for each feature or may give a composite actual annual percentage rate for the entire plan.

Section 226.8—Identification of Transactions

8(a) Sale Credit

In the last sentence of comment 8(a)(3)–2, the inadvertent reference to "creditor's stores would be changed to "seller's" stores.

Comment 8(a)(3)–4 would be added to reflect the position under previous Regulation Z that the debiting date may be considered the transaction date for foreign transactions.

Section 226.9—Subsequent Disclosure Requirements

9(c) Change in Terms

Comment 9(c)–1 would be revised to correspond to the revisions to comment 6(a)(2)–2.

Section 226.13—Billing-error Resolution

13(d) Rules Pending Resolution

Comment 13(d)(1)–2 would be revised to clarify that, for purposes of § 226.13(d)(1), the creditor need only disclose that payment of "any disputed amount" is not required pending resolution, as was the case under the previous Regulation Z.

Section 226.14—Determination of Annual Percentage Rate

14(c) Annual Percentage Rate for Periodic Statements

An editorial change would be made to comment 14(c)–8 to correct the

inadvertent use of the term "fees" instead of "finance charges." The change would indicate that the optional annual percentage rate formula in § 226.14(c)(4) may be used when small finance charges, not fees, of 50 cents or less are involved.

Comment 14(c)–9 would be added merely to cross-reference comment 14(d)–2. The latter comment discusses the annual percentage rate calculation methods for plans involving both daily periodic rates and specific transaction charges.

14(d) Calculations Where Daily Periodic Rate Applied

Comment 14(d)–2 would be revised to provide alternative annual percentage rate calculation methods when the finance charge results from the application of both daily periodic rates and specific transaction charges. The comment would allow creditors to use either the method in § 226.14(c)(3) or the method in §226.14(d)(2); comment is specifically solicited on whether the option to use the method in § 226.14(d)(2) is needed.

The §226.14(c)(3) method includes the rules in Appendix F; the appendix gives examples for determining the denominator of the fraction in this formula. Footnote 1 to the appendix instructs creditors that apply both a daily periodic rate and a specific transaction charge to use the average of daily balances instead of the sum of the balances.

If the §226.14(d)(2) method is used, the creditor should apply the rule that balances not be duplicated (set forth in §226.14(c)(3) and explained in comment 14(c)–5), as well as the rule that the annual prcentage rate must not be less than the largest corresponding annual percentage rate for that cycle (set forth in §226.14(c)(3)).

Section 226.15—Right of Rescission

15(a) Consumer's Right to Rescind

Two changes are proposed for comment 15(a)–2. First, the dates in the comment, which refer to the three-year trial period in section 125(e) of the act, would be changed from March 31, 1985 to September 30, 1985 to reflect the change in the mandatory effective date of the act from April 1, 1982 to October 1, 1982. Second, a sentence would be added to clarify that the limited rescission option is available for programs whether or not they existed on the effective date of the act.

Section 226.16—Advertising

16(b) Advertisement of Terms that Require Additional Disclosures

Comment 16(b)(1)–6 would be added to make clear that charges excluded from the finance charge under §226.4 are not required disclosures when a triggering term is used in an advertisement.

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(a) Form of Disclosures

Comment 17(a)(1)–5 would add four examples of "directly related" information. The first example relating to § 226.18(k)(1) would clarify the applicability of the § 226.18(k)(1) disclosure. For purposes of this disclosure, a minimum finance charge is considered a penalty. Some state laws prohibit creditors from charging to a penalty in the event of prepayment while permitting the creditor to charge a minimum charge. In this instance the creditor may state that a minimum finance charge will be imposed. The second example relating to § 226.18(k) would enable creditors to identify which finance charge triggered the § 226.18(k)(2) prepayment disclosure.

The example relating to § 226.18(f) responds to inquiries about disclosing the fact that a variable rate feature may produce negative amortization. It permits rate creditors to disclose this fact when making the other required variable rate disclosures. The last example would permit the inclusion of a title for the disclosure statement.

17(c) Basis of Disclosures and Use of Estimates

Comment 17(c)(1)–1 would be revised to clarify the meaning of the term "legal obligations." A sentence would be added to show the effect of certain previous court decisions on disclosure of the legal obligation, and the sentence discussing contracts later deemed unenforceable by a court would be modified to include situations in which an individual term, rather than an entire contract, is deemed unenforceable. Portions of comments 17(c)(1)–1 and 2 would be restructured for added clarity.

Comment 17(c)(1)–4 would be revised to clarify the treatment of certain buydown plans, including the Federal National Mortgage Association's Buydown Program, as revised for commitments issued on or after February 16, 1982.

A new comment 17(c)(1)–8 would be added to clarify the treatment of adjustable rate mortgages that contain a graduated payment feature or an initial payment amount resulting in negative amortization. This comment applies to mortgages such as the graduated payment adjustable mortgage loan authorized by the Federal Home Loan Bank Board (12 CFR 545.6–4b).

New comments 17(c)(3)–2 and 17(c)(4)–2 would be added to clarify that a creditor may ignore minor variations in calculating some disclosures without being required to ignore those variations in computing all of the disclosures.

17(d) Multiple Creditors; Multiple Consumers

Material that was inapprpriate for commentary treatment would be deleted from comment 17(d)–1.

17(h) Series of Sales—Delay in Disclosures

Comment 17(h)–2 would be added to address the content of disclosures for transactions under § 226.17(h).

17(i) Interim Student Credit Extensions

Comment 17(i)–1 would be amended to clarify the applicability of this provision. No substantive change would be made.

Comment 17(i)–2 would be revised to provide further guidance on the basis for interim student credit disclosures.

Comment 17(i)–5 would be added as a cross-reference to Appendix H, regarding approved disclosure forms.

Section 226.18—Content of Disclosures

18(f) Variable Rate

Comment 18(f)–2 would be amended to clarify that the disclosures in a variable-rate transaction are not considered estimates and should not be labelled as such.

Comment 18(f)–2 would be added to discuss the treatment of growth equity mortgages.

Comment 18(f)(3)–1 would be revised to include a cross-reference to comment 17(a)(1)–5, which permits the inclusion of a brief reference to negative amortization in the variable-rate disclosures.

A sentence would be added to comment 18(f)(4)–1 to clarify that the example may reflect an immediate increase only when the contract terms permit an immediate increase in the rate.

Comment 18(f)(4)–2 would contain additional examples of transactions that need not make the hypothetical disclosure required in most transactions by § 226.18(f)(4).

18(g) Payment Schedule

Comment 18(g)–1 would be revised to clarify that prepaid finance charges are not reflected in the payment schedule.

Comment 18(g)(2)–1 would be revised to clarify that the abbreviated disclosures may be employed when mortgage insurance premium payments gradually increase over a portion of the loan term. This will occur if the accrual rate exceeds the payment rate for a period and negative amortization causes the unpaid principal balance to increase. During this period, the amount of each premium payment will increase to insure the increasing principal balance. When negative amortization ends, the premiums will decrease in a traditional manner. The proposed language would permit the creditor to disclose the lowest and highest payments in the increasing series (with a reference to the variation in payments) followed by the highest and lowest payments in the decreasing series (with a reference to the variation in payments).

18(i) Demand Feature

Comment 18(i)–2 would be revised to clarify that a due-on-sale clause is not considered a demand feature requiring disclosure.

18(k) Prepayment

Comment 18(k)(1)–1 would be changed by the addition of the word "scheduled" to the first sentence. The change is to clarify that this disclosure applies not only to interest calculations made daily, but to calculations that are made other than daily while taking into account reductions in principal. A cross-reference to comment 17(a)(1)–5 would be added to point out the permitted reference to a minimum finance charge in the penalty disclosure.

Comment 18(k)(2)–1 would be revised to include a cross-reference to comment 17(a)(1)–5, which permits creditors to describe in the disclosure statement the type of finance charge subject to a rebate.

18(r) Required Deposit

A new comment 18(r)–2 would be added to address pledged account or FLIP mortgages, allowing creditors two options in disclosing those types of transactions.

Section 226.19—Certain Residential Mortgage Transactions

19(a) Time of Disclosure

Comment 19(a)–2 would be revised to conform with comment 17(a)(1)–5, regarding explanation of the basis for estimates.

Section 226.20—Subsequent Disclosure Requirements

20(a) Refinancings

The amendment to comment 20(a)–3 would clarify the current commentary position that the addition of a variable-rate feature to a previously fixed rate transaction requires new disclosures regardless of the manner in which the change is made. The remainder of comment 20(a)–3 discusses a variable-rate transaction for which no variable-rate disclosures were ever provided.

New comment 20(a)–5 would clarify the coverage of § 226.20(a). "Refinancing," as the term is used here, refers only to a new transaction undertaken with the original creditor (or a holder or service of the original obligation) to replace the original obligation. The term "refinancing" is sometimes used to refer to a loan, the proceeds of which are used in whole or in part to satisfy an obligation to a different creditor. Under the regulation, that is not a refinancing but a new transaction subject to the general coverage rules and disclosure requirements of the regulation.

20(b) Assumptions

The revisions to comments 20(b)–1 and 6 would clarify the coverage of § 226.20(b). The following elements must all be present before an assumption under this section requires new disclosures:

- The original obligation must have been a consumer credit obligation that was not originally exempt.
- The assumption must be accompanied by no significant change in terms (as described in comment 20(b)–6).
- The creditor must expressly agree to the new consumer as a primary obligor.
- The agreement must be in writing.
- The transaction must be a "residential mortgage transaction" as to the new consumer.

All of the above elements must be present in order to require assumption disclosures under § 226.20(b). An apparent assumption that has the first two elements but does not have all the remaining three requires no disclosures at all. However, an apparent assumption that fails to have one or both of the first two elements listed above is not subject to § 226.20(b). To determine if disclosures are required in that case, the creditor must analyze the transaction under §§ 226.2 and 226.3.

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate

A sentence would be added to comment 22(a)(1)–4 to provide an example of a composite annual percentage rate for a step-rate transaction.

Section 226.24—Advertising

24(b) Advertisement of Rate of Finance Charge

Comment 24(b)–2 would be added to clarify that stating the effective simple annual payment rate for any portion of the repayment period constitutes a statement of a rate of finance charge under that section, requiring that the annual percentage rate also be stated.

Appendix D—Multiple-Advance Construction Loans

Comment D–2 would be added to clarify that disclosure of a variable-rate hypothetical is not required for multiple-advance construction loans disclosed pursuant to Appendix D, part I. (See comment 18(f)(4)–2).

Comment D–3 would be added to clarify that the total of payments disclosure under Appendix D may be calculated as either the sum of the payments or as the amount financed plus the finance charge.

Comment D–4 would be added to make it clear that under Appendix D creditors may disclose an estimated APR computed under either the actuarial method or the Volume I method.

Appendix F—Annual Percentage Rate Computations for Certain Open-End Credit Plans

Comment F–1 would be added to cross-reference comment 14(d)–2. The latter comment discusses the annual percentage rate calculation methods for plans involving both daily periodic rates and specific transaction charges.

Appendix H—Closed-End Model Forms and Clauses

Comments H–17 and 18 would be added to reflect the approval under section 113 of the act of two student loan disclosure forms issued by the Department of Education in conjunction with the PLUS program.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

TRUTH IN LENDING

Proposed Official Staff Commentary Update

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: In accordance with Appendix C to 12 CFR 226, the staff of the Federal Reserve Board is publishing for comment a proposed update to the official staff commentary to Regulation Z (Truth in Lending), as revised effective April 1, 1981. The commentary was published in the Federal Register on October 9, 1981 (46 FR 50288) and became effective October 13, 1981.

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Complete Text

[Ref. Cir. No. 9298]

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(2) Proposed Revisions. Following is a brief description of the revisions contained in the commentary update.

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SUBPART A - GENERAL

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SECTION 226.4 -- Finance Charge

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SUBPART B - OPEN-END CREDIT

SECTION 226.5 -- General Disclosure Requirements

5(a) Form of Disclosures

Comment 5(a)(2)-1 would be revised to include additional examples of the application of the "more conspicuous" rule. These examples would clarify the rule; no substantive changes are intended.

5(b) Time of Disclosures

Comment 5(b)(1)-1 would be revised to explain more clearly when initial disclosures are timely if the plan involves an initial fee that is paid before the initial disclosures are given, or if the plan involves an advance made at the time that the consumer is given the initial disclosures.

5(c) Legal Obligation

Comment 5(c)-1 would be revised to clarify the meaning of the term "legal obligaiton." Comment 17(c)(1)-1, which contains a discussion of legal obligation for closed-end credit transactions, would add a sentence to show the effect of certain previous court decisions on disclosures. This issue arises in part because of the requirement that closed-end disclosures be segregated from other information, a requirement that does not exist for open-end credit. The staff solicits comment on whether a companion provision for open-end credit should be added.

5(d) Multiple Creditors; Multiple Consumers

Material that was inappropriate for commentary treatment would be deleted from comment 5(d)-1.

SECTION 226.6 - Initial Disclosure Statement

6(a) Finance Charge

Comment 6(a)(2)-2 would be revised in its description of the types of open-end credit programs for which the creditor's initial disclosure of planned rate changes excuses the creditor from the general requirement to give notices when the rate increases according to the disclosed plan. The current commentary provides that creditors may avoid these notices after giving appropriate disclosures in plans in which the rates follow an index that is "readily verifiable by the borrower and beyond the control of the lender."

A number of questions have arisen as to the interpretation and purpose of the current commentary language. In particular, some creditors have raised concerns about programs that would use certain internal rates as the index and therefore not meet the criterion that the index be beyond the lender's control. These creditors have noted that tying the rate to their commercial lending rate or to rates paid on savings instruments are customary practices. The proposal reflects these concerns, while at the same time continuing to provide guidance on the types of rate increases for which additional disclosures may be needed.

6(b) Other Charges

Language would be added to comment 6(b)-2 to provide that a charge for submitting as payment a check that is later returned unpaid would not be an other charge.

SECTION 226.7 -- Periodic Statements

7(b) Identification of Transactions

Comment 7(b)-1 would be revised to clarify that the listed ways for a creditor to identify transactions for multifeatured plans are merely examples of acceptable arrangements.

7(c) Credits

Comment 7(c)-3 would be revised to clarify when additional identification of dates is needed, and also that no specific terminology would be required for these date identifications.

7(e) Balance on Which Finance Charge Computed

Comment 7(e)-2 would be revised by indicating that the exception permitting the creditor to disclose one combined balance when split rates (or "break rates") are applied does not extend to the case in which split rates are applied to each day's balance. This change would return to the position under previous Regulation Z, and correct the inadvertent reference in current comment 7(e)-4). That reference permitted a combined balance, which would not allow verification of the finance charge attributable to periodic rates.

The last sentence of current comment 7(e)-4 would be deleted, and incorporated in comment 7(e)-2.

Comments 7(e)-4, 5, 6, and 7 of the current commentary would be redesignated as comments 7(e)-5, 6, 7, and 8, and current comment 7(e)-8, which deals with the disclosure of the periodic rate balance amount in multifeatured plans, would be redesignated as comment 7(e)-4.

Comment 7(e)-4 (current comment 7(e)-8) would be revised to give more complete guidance on when separate balances must be disclosed when a plan involves different features.

Comment 7(e)-9 would be added to clarify that the creditor could explain its balance computation method only once, even if it chooses to disclose more than one balance computed by that same method.

7(g) Annual Percentage Rate

Comment 7(g)-2 would be expanded to clarify that, in multifeatured plans, the creditor may give separate annual percentage rate disclosures for each feature or may give a composite actual annual percentage rate for the entire plan.

SECTION 226.8 -- Identification of Transactions

8(a) Sale Credit

In the last sentence of comment 8(a)(3)-2, the inadvertent reference to "creditor's" stores would be changed to "seller's" stores.

Comment 8(a)(3)-4 would be added to reflect the position under previous Regulation Z that the debiting date may be considered the transaction date for foreign transactions.

SECTION 226.9 -- Subsequent Disclosure Requirements

9(c) Change in Terms

Comment 9(c)-1 would be revised to correspond to the revisions to comment 6(a)(2)-2.

SECTION 226.13 -- Billing Error Resolution

13(d) Rules Pending Resolution

Comment 13(d)(1)-2 would be revised to clarify that, for purposes of § 226.13(d)(1), the creditor need only disclose that payment of "any disputed amount" is not required pending resolution, as was the case under the previous Regulation Z.

SECTION 226.14 -- Determination of Annual Percentage Rate

14(c) Annual Percentage Rate for Periodic Statements

An editorial change would be made to comment 14(c)-8 to correct the inadvertent use of the term "fees" instead of "finance charges." The change

would indicate that the optional annual percentage rate formula in § 226.14(c)(4) may be used when small finance charges, not fees, of 50 cents or less are involved.

Comment 14(c)-9 would be added merely to cross-reference comment 14(d)-2. The latter comment discusses the annual percentage rate calculation methods for plans involving both daily periodic rates and specific transaction charges.

14(d) Calculations Where Daily Periodic Rate Applied

Comment 14(d)-2 would be revised to provide alternative annual percentage rate calculation methods when the finance charge results from the application of both daily periodic rates and specific transaction charges. The comment would allow creditors to use either the method in § 226.14(c)(3) or the method in § 226.14(d)(2); comment is specifically solicited on whether the option to use the method in § 226.14(d)(2) is needed.

The § 226.14(c)(3) method includes the rules in Appendix F; the appendix gives examples for determining the denominator of the fraction in this formula. Footnote 1 to the appendix instructs creditors that apply both a daily periodic rate and a specific transaction charge to use the average of daily balances instead of the sum of the balances.

If the § 226.14(d)(2) method is used, the creditor should apply the rule that balances not be duplicated (set forth in § 226.14(c)(3) and explained in comment 14(c)-5), as well as the rule that the annual percentage rate must not be less than the largest corresponding annual percentage rate for that cycle (set forth in § 226.14(c)(3)).

SECTION 226.15 -- Right of Rescission

15(a) Consumer's Right to Rescind

Two changes are proposed for comment 15(a)-2. First, the dates in the comment, which refer to the three-year trial period in § 125(e) of the act, would be changed from March 31, 1985 to September 30, 1985 to reflect the change in the mandatory effective date of the act from April 1, 1982 to October 1, 1982. Second, a sentence would be added to clarify that the limited rescission option is available for programs whether or not they existed on the effective date of the act.

SECTION 226.16 -- Advertising

16(b) Advertisement of Terms that Require Additional Disclosures

Comment 16(b)(1)-6 would be added to make clear that charges excluded from the finance charge under § 226.4 are not required disclosures when a triggering term is used in an advertisement.

SUBPART C - CLOSED-END CREDIT

SECTION 226.17 -- General Disclosure Requirements

17(a) Form of Disclosures

Comment 17(a)-5 would add four examples of "directly related" information. The first example relating to § 226.18(k) would clarify the applicability of the § 226.18(k)(1) disclosure. For purposes of this disclosure, a minimum finance charge is considered a penalty. Some state laws prohibit creditors from charging a penalty in the event of prepayment while permitting the creditor to charge a minimum charge. In this instance the creditor may state that a minimum finance charge will be imposed. The second example relating to § 226.18(k) would enable creditors to identify which finance charge triggered the § 226.18(k)(2) prepayment disclosure.

The example relating to § 226.18(f) responds to inquiries about disclosing the fact that a variable rate feature may produce negative amortization. It permits creditors to disclose this fact when making the other required variable rate disclosures. The last example would permit the inclusion of a title for the disclosure statement.

17(c) Basis of Disclosures and Use of Estimates

Comment 17(c)(1)-1 would be revised to clarify the meaning of the term "legal obligation." A sentence would be added to show the effect of certain previous court decisions on disclosure of the legal obligation, and the sentence discussing contracts later deemed unenforceable by a court would be modified to include situations in which an individual term, rather than an entire contract, is deemed unenforceable. Portions of comments 17(c)(1)-1 and 2 would be restructured for added clarity.

Comment 17(c)(1)-4 would be revised to clarify the treatment of certain buydown plans, including the Federal National Mortgage Association's Buydown Program, as revised for commitments issued on or after February 16, 1982.

A new comment 17(c)(1)-8 would be added to clarify the treatment of adjustable rate mortgages that contain a graduated payment feature or an initial payment amount resulting in negative amortization. This comment applies to mortgages such as the graduated payment adjustable mortgage loan authorized by the Federal Home Loan Bank Board (12 CFR 545.6-4b).

New comments 17(c)(3)-2 and 17(c)(4)-2 would be added to clarify that a creditor may ignore minor variations in calculating some disclosures without being required to ignore those variations in computing all of the disclosures.

17(d) Multiple Creditors; Multiple Consumers

Material that was inappropriate for commentary treatment would be deleted from comment 17(d)-1.

17(h) Series of Sales--Delay in Disclosures

Comment 17(h)-2 would be added to address the content of disclosures for transactions under § 226.17(h).

17(i) Interim Student Credit Extensions

Comment 17(i)-1 would be amended to clarify the applicability of this provision. No substantive change would be made.

Comment 17(i)-2 would be revised to provide further guidance on the basis for interim student credit disclosures.

Comment 17(i)-5 would be added as a cross-reference to Appendix H, regarding approved disclosure forms.

SECTION 226.18 -- Content of Disclosures

18(f) Variable Rate

Comment 18(f)-2 would be amended to clarify that the disclosures in a variable-rate transaction are not considered estimates and should not be labelled as such.

Comment 18(f)-6 would be added to discuss the treatment of growth equity mortgages.

Comment 18(f)(3)-1 would be revised to include a cross-reference to comment 17(a)(1)-5, which permits the inclusion of a brief reference to negative amortization in the variable-rate disclosures.

A sentence would be added to comment 18(f)(4)-1 to clarify that the example may reflect an immediate increase only when the contract terms permit an immediate increase in the rate.

Comment 18(f)(4)-2 would contain additional examples of transactions that need not make the hypothetical disclosure required in most transactions by § 226.18(f)(4).

18(g) Payment Schedule

Comment 18(g)-1 would be revised to clarify that prepaid finance charges are not reflected in the payment schedule.

Comment 18(g)(2)-1 would be revised to clarify that the abbreviated disclosures may be employed when mortgage insurance premium payments gradually increase over a portion of the loan term. This will occur if the accrual rate exceeds the payment rate for a period and negative amortization causes the unpaid principal balance to increase. During this period, the amount of each premium payment will increase to insure the increasing principal balance. When negative amortization ends, the premiums will decrease in a traditional manner. The proposed language would permit the creditor to disclose the lowest and highest payments in the increasing series (with a reference to the variation in payments) followed by the highest and lowest payments in the decreasing series (with a reference to the variation in payments).

18(i) Demand Feature

Comment 18(i)-2 would be revised to clarify that a due-on-sale clause is not considered a demand feature requiring disclosure.

18(k) Prepayment

Comment 18(k)(1)-1 would be changed by the addition of the word "scheduled" to the first sentence. The change is to clarify that this disclosure applies not only to interest calculations made daily, but to calculations that are made other than daily while taking into account reductions in principal. A cross-reference to comment 17(a)(1)-5 would be added to point out the permitted reference to a minimum finance charge in the penalty disclosure.

Comment 18(k)(2)-1 would be revised to include a cross-reference to comment 17(a)(1)-5, which permits creditors to describe in the disclosure statement the type of finance charge subject to a rebate.

18(r) Required Deposit

A new comment 18(r)-2 would be added to address pledged account or FLIP mortgages, allowing creditors two options in disclosing those types of transactions.

SECTION 226.19 -- Certain Residential Mortgage Transactions

19(a) Time of Disclosure

Comment 19(a)-2 would be revised to conform with comment 17(a)(1)-5, regarding explanation of the basis for estimates.

SECTION 226.20 -- Subsequent Disclosure Requirements

20(a) Refinancings

The amendment to comment 20(a)-3 would clarify the current commentary position that the addition of a variable-rate feature to a previously fixed rate transaction requires new disclosures regardless of the manner in which

the change is made. The remainder of comment 20(a)-3 discusses a variable-rate transaction for which no variable-rate disclosures were ever provided.

New comment 20(a)-5 would clarify the coverage of § 226.20(a). "Refinancing," as the term is used here, refers only to a new transaction undertaken with the original creditor (or a holder or servicer of the original obligation) to replace the original obligation. The term "refinancing" is sometimes used to refer to a loan, the proceeds of which are used in whole or in part to satisfy an obligation to a different creditor. Under the regulation, that is not a refinancing but a new transaction subject to the general coverage rules and disclosure requirements of the regulation.

20(b) Assumptions

The revisions to comments 20(b)-1 and 6 would clarify the coverage of § 226.20(b). The following elements must all be present before an assumption under this section requires new disclosures:

- The original obligation must have been a consumer credit obligation that was not originally exempt.
- The assumption must be accompanied by no significant change in terms (as described in comment 20(b)-6).
- The creditor must expressly agree to the new consumer as a primary obligor.
- The agreement must be in writing.
- The transaction must be a "residential mortgage transaction" as to the new consumer.

All the above elements must be present in order to require assumption disclosures under § 226.20(b). An apparent assumption that has the first two elements but does not have all the remaining three requires no disclosures at all. However, an apparent assumption that fails to have one or both of the first two elements listed above is not subject to § 226.20(b). To determine if disclosures are required in that case, the creditor must analyze the transaction under § 226.2 and § 226.3.

SECTION 226.22 -- Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate

A sentence would be added to comment 22(a)(1)-4 to provide an example of a composite annual percentage rate for a step-rate transaction.

SECTION 226.24 -- Advertising

24(b) Advertisement of Rate of Finance Charge

Comment 24(b)-2 would be added to clarify that stating the effective simple annual payment rate for any portion of the repayment period constitutes a statement of a rate of finance charge under that section, requiring that the annual percentage rate also be stated.

APPENDIX D -- Multiple-Advance Construction Loans

Comment D-2 would be added to clarify that disclosure of a variable-rate hypothetical is not required for multiple-advance construction loans disclosed pursuant to Appendix D, Part I. (See comment 18(f)(4)-2).

Comment D-3 would be added to clarify that the total of payments disclosure under Appendix D may be calculated as either the sum of the payments or as the amount financed plus the finance charge.

Comment D-4 would be added to make it clear that under Appendix D creditors may disclose an estimated APR computed under either the actuarial method or the Volume I method.

APPENDIX F -- Annual Percentage Rate Computations for Certain Open-End Credit Plans

Comment F-1 would be added to cross-reference comment 14(d)-2. The latter comment discusses the annual percentage rate calculation methods for plans involving both daily periodic rates and specific transaction charges.

APPENDIX H -- Closed-End Model Forms and Clauses

Comments H-17 and 18 would be added to reflect the approval under section 113 of the act of two student loan disclosure forms issued by the Department of Education in conjunction with the PLUS program.

(3) Text of Proposal. The proposed revisions to the commentary read as follows:

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INTRODUCTION ***

3. Status of previous interpretations. All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until [April 1,] ▶ October 1, ◀ 1982 only insofar as they interpret that regulation. When compliance with revised Regulation Z becomes mandatory on [April 1,] ▶ October 1, ◀ 1982, the Board and staff interpretations of the previous regulation will be entirely superseded by the revised regulation and this commentary except with regard to liability under the previous regulation. ***

SUBPART A - GENERAL ***

SECTION 226.2 -- Definitions and Rules of Construction

2(a) Definitions ***

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

▶ 6. Real estate brokers. The general definition does not include a person (such as a real estate broker or salesperson) when arranging for the seller of real property or a dwelling to finance its purchase in whole or in part, even if the obligation by its terms is simultaneously assigned by the seller to another person. However, a broker or salesperson is not exempt from coverage in all transactions. For example, a real estate broker may be a creditor in the following situations:

- The broker acts as a loan broker to arrange for someone other than the seller to extend credit, provided that the extender of credit (the person to whom the obligation is initially payable) does not meet the "creditor" definition.
- The broker extends credit itself, provided that the broker otherwise meets the "creditor" definition. ◀ ***

2(a)(13) "Consummation"

1. State law governs. When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. ▶ Consummation occurs when, under state law, the consumer becomes contractually obligated to accept specific credit terms. A contractual commitment agreement, for example, that binds the parties to specific credit terms would be consummation. ◀ Consummation ▶, however, ◀ does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise. ***

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

2. Examples. Common examples of prepaid finance charges include:

- Buyer's points.
- Service fees.
- Loan fees.
- Finder's fees.
- Loan guarantee insurance.
- Credit investigation fees.

However, in order for these or any other finance charges to be considered prepaid, they must be either paid separately in cash or check or withheld from the proceeds. ▶ Prepaid finance charges include any portion of the finance charge paid at closing or settlement. ◀ ***

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

1. Relation to other sections. This term is important in [five] ▶ six ◀ provisions in the regulation:

- Section 226.4(c)(7) -- exclusions from the finance charge.
- Section 226.15(f) -- exemption from the right of rescission.
- Section 226.18(q) -- whether or not the obligation is assumable.
- Section 226.19 -- special timing rules.
- ▶ Section 226.20(b) -- disclosure requirements for assumptions. ◀
- Section 226.23(f) -- exemption from the right of rescission. ***

2(a)(25) "Security Interest" ***

2. Exclusions. The general definition of security interest excludes three groups of interests: incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under section 226.18, but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. ▶ If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for Truth in Lending purposes. ◀ ***

SECTION 226.4 -- Finance Charge ***

4(b) Examples of Finance Charges ***

Paragraph 4(b)(9) ***

▶ 3. Determination of the regular price. The "regular price" is critical in determining whether the difference between the price charged to cash customers and credit customers is a "discount" or a "surcharge," as these terms are defined in amended § 103 of the act. The "regular price" is generally the price displayed on the merchandise being sold. In the sale of motor vehicle fuel, for example, the regular price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign clearly indicates that the price is limited to cash purchases. ◀ ***

4(c) Charges Excluded from the Finance Charge ***

Paragraph 4(c)(7)

1. Real estate or residential mortgage transaction charges. The list of charges in section 226.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, credit report fees include not only the cost of the report itself, but also the cost of verifying information in the report. In all cases, the charges must be bona fide and reasonable. If a lump sum is charged for several services and includes a charge that is not excludable [(for example, a charge for a lawyer's attending the closing)], a portion of the total should be allocated to that service and included in the finance charge. ▶ A charge for a lawyer's attendance at the closing to insure that documents are completed and executed properly is excluded from the finance charge. ◀

4(d) Insurance ***

▶ 11. Initial term. The initial term of insurance coverage determines the period for which a premium amount must be disclosed. In some cases the initial term is clear, for example, a property insurance policy on an automobile written for one year (even though the term of the credit transaction is four years) or a credit life insurance policy for the term of the credit transaction purchased by paying or financing a single premium. In other cases, however, it may not be clear what the initial term of the insurance is. If the creditor is unsure of the initial term of insurance coverage, the premium disclosed may be the premium for one year of insurance coverage. The premium must be clearly labeled as being for one year. ◀

SECTION 226.5 -- General Disclosure Requirements

5(a) Form of Disclosures ***

Paragraph 5(a)(2)

1. When disclosures must be "more conspicuous." The terms "finance charge" and "annual percentage rate" ▶ , when required to be used with a number, ◀ must be disclosed more conspicuously ▶ than other required disclosures, ◀ [when required to be used with a number.] ▶ except in two cases as provided in footnote 9. First, the corresponding annual percentage rate under section 226.7(d) may be less conspicuous than disclosure of the actual annual percentage rate under section 226.7(g). Second, neither term need be more conspicuous than other required disclosures under section 226.16 in advertisements. ◀ [For example, on the initial disclosure statement, the annual percentage rate disclosure under section 226.6(a)(2) must be "more conspicuous." The following apply to the "more conspicuous" rule:] ▶ At the creditor's option, "finance charge" and "annual percentage rate" may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:

- On the initial disclosure statement, the disclosure for the annual percentage rate that corresponds to each periodic rate, required by section 226.6(a)(2), must be "more conspicuous" than other required disclosures.

- If the plan involves a minimum finance charge, it must be disclosed on the initial disclosure statement more conspicuously than other required disclosures when accompanied by the amount of the finance charge.

- On the periodic statement, the disclosure of the amount of the finance charge, required by section 226.7(f), must be "more conspicuous" than other required disclosures.

- Although neither ◀ [Neither term] ▶ "finance charge" nor "annual percentage rate" ◀ need be emphasized when used as part of general informational material or in textual descriptions of other terms, [although] emphasis is permissible in such cases. For example, when the terms appear as part of the explanations required under section 226.6(a)(3) and (4), they may be [as] ▶ equally ◀ conspicuous as the disclosures required under sections 226.6(a)(2) and 226.7(g).

[- The corresponding annual percentage rate under section 226.7(d) may be less conspicuous than the disclosure of the actual annual percentage rate (historical rate) under section 226.7(g) when the two rates differ. This is permitted by footnote 9 to section 226.5(a)(2), which excepts section 226.7(d) disclosures from the "more conspicuous" requirement.] ***

5(b) Time of Disclosures

5(b)(1) Initial Disclosures

1. Disclosure before the first transaction. The rule that the initial disclosure statement must be furnished "before the first transaction" requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan (for example, before the consumer makes the first purchase, receives the first advance, or pays a fee under the plan). [Delivery of the initial disclosure statement is timely even if a membership fee, advance, or purchase already has been posted to the consumer's account, so long as the consumer may, after receiving the disclosures, reject the plan and have no further obligation beyond returning a credit card or any money or goods.]

▶ ∘ If the consumer pays a membership fee before receiving the Truth in Lending disclosures, or the consumer agrees to the imposition of a membership fee at the time of application and the Truth in Lending disclosure statement is not given at that time, disclosures are timely as long as the consumer, after receiving the disclosures, can reject the plan. The creditor must refund the membership fee, if it has been paid, or if it has been debited to the consumer's account, the creditor must clear the account.

∘ If the consumer receives a cash advance check at the same time the Truth in Lending disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).

∘ Initial disclosures need not be given before the imposition of an application fee under section 226.4(c)(1).

∘ If the consumer uses the account, pays a fee, or negotiates a cash advance check after receiving the disclosures, the creditor may consider the account not rejected for purposes of this section. ◀ ***

5(c) Basis of Disclosures and Use of Estimates

1. Legal obligation. The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.

∘ The legal obligation is [normally] determined by applicable state or other law.

- The fact that a ▶ term or ◀ contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that ▶ term or ◀ contract did not reflect the legal obligation.

- The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract. ***

5(d) Multiple Creditors; Multiple Consumers

1. Multiple creditors. Under section 226.5(d):

- Creditors must choose which of them will make the disclosures.

- A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

[- Each creditor in the plan is legally responsible for seeing that the disclosures are provided.]

- All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.

- In some open-end credit programs involving multiple creditors, the consumer has the option (for example, at the end of a billing cycle) to pay creditor A directly or to transfer to creditor B all or part of the amount owing. If the consumer elects the latter option, the consumer no longer is obligated to creditor A for the specific amount(s) transferred. In such a case, creditor A and creditor B may send separate periodic statements that reflect the separate obligations owed to each. ***

SECTION 226.6 -- Initial Disclosure Statement ***

Paragraph 6(a)(2) ***

[2. Variable-rate plan defined. A variable-rate plan contemplates a series of rate changes in accordance with an index that is readily verifiable by the borrower and beyond the control of the lender (for example, the Treasury bill rate). A contract right to increase the rate upon any other contingency, or at the creditor's discretion, would not be a variable-rate plan. For example, an open-end credit plan in which the employee receives a lower rate contingent upon employment, with the rate to be increased upon termination of employment, would not be a variable-rate plan. Similarly, an open-end credit plan that provides for rate increases voted by the board of directors of a financial institution would not be a variable-rate plan.]

2. Variable-rate disclosures - coverage. This section covers open-end credit plans under which rate changes are part of the plan and are tied to an index or formula. A creditor would use variable-rate disclosures (and thus be excused from the requirement of giving a change-in-terms notice when rate increases occur as disclosed) for plans involving rate changes such as the following:

- Rate changes that are tied to the rate the creditor pays on its 6-month money market certificates.
- Rate changes that are tied to treasury bill rates.
- Rate changes that are tied to changes in the creditor's commercial lending rate.

In contrast, the creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates) would not be considered a variable-rate plan for Truth in Lending disclosure purposes. Moreover, an open-end credit plan in which the employee receives a lower rate contingent upon employment (that is, with the rate to be increased upon termination of employment) is not a variable-rate plan. ***

6(b) Other Charges ***

2. Exclusions. The following are examples of charges that are not "other charges":

- Fees charged for documentary evidence of transactions for income tax purposes.
- Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.
- Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.
- Application fees under section 226.4(c)(1).
- A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.
- Charges for submitting as payment a check that is later returned unpaid. (See comment 4(c)(2)-2.) ***

SECTION 226.7 -- Periodic Statement ***

7(b) Identification of Transactions

1. Multifeatured plans. In identifying transactions under section 226.7(b) [, transactions may be grouped by feature (such as by disclosing sale transactions separately from cash advance transactions) or may be arranged by date.] ▶ for multifeatured plans, creditors may, for example, choose to arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions) or in some other clear manner, such as by arranging the transactions in general chronological order. ◀ ***

7(c) Credits ***

3. Date. [The crediting date need not be identified as "crediting date," unless two or more dates are disclosed for a single entry (for example, the posting date and the crediting date).] ▶ If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given. ◀ ***

7(e) Balance on which Finance Charge Computed ***

2. Split rates applied to balance ranges. If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5 percent applied to the first $500, and a monthly periodic rate of 1 percent to the remainder. ▶ This does not apply when the finance charge is computed by applying the split rates to each day's balance. In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(e)-5). ◀

Comment 7(e)-8 is redesignated as 7(e)-4.

[8. Multifeatured plans. In a multifeatured plan, the balance on which the finance charge was computed must be disclosed for each feature to which a periodic rate was applied. A total balance for the entire plan is optional.]

▶ 4. Multifeatured plans. In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature or group of features subject to different periodic rates or different balance computation methods. Separate balances are not

required, however, merely because a "free-ride" period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose -- or may disclose -- within each feature. (See, for example, comment 7(e)-5.) ◀ ***

Comment 7(e)-4 is redesignated as 7(e)-5.

5. Daily rate on daily balance. If the finance charge is computed on the balance each day by application of one or more daily periodic rates, the balance on which the finance charge was computed may be disclosed in any of the following ways for each feature:

- If a single daily periodic rate is imposed, the balance to which it is applicable may be stated as:

  -a balance for each day in the billing cycle

  -a balance for each day in the billing cycle on which the balance in the account changes

  -the sum of the daily balances during the billing cycle

  -the average daily balance during the billing cycle, in which case the creditor shall explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of the finance charge.

- If two or more daily periodic rates may be imposed, the balances to which the rates are applicable may be stated as:

  -a balance for each day in the billing cycle

  -a balance for each day in the billing cycle on which the balance in the account changes

  -as two or more average daily balances, each applicable to the daily periodic rates imposed for the time that those rates were in effect, as long as the creditor explains that the finance charge is or may be determined by (1) multiplying each of the average balances by the number of days in the billing cycle, (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (2) multiplying each of the results by the applicable daily periodic rate, and (3) adding these products together. [If the different rates are due to disclosed ranges of balances

(see comment 7(e)-2), the creditor need give only one average daily balance together with the additional information required by this paragraph.]

Comments 7(e)-5, 6, and 7 are redesignated as 7(e)-6, 7, and 8 respectively.

Comment 7(e)-8 is redesignated as 7(e)-4.

▶ 9. Use of one balance computation method explanation when multiple balances disclosed. Sometimes the creditor will disclose more than one balance to which a periodic rate was applied even though each balance was computed using the same balance computation method. In these cases, one explanation of the balance computation method is sufficient. ◀ ***

7(g) Annual Percentage Rate ***

2. Multifeatured plans. In a multifeatured plan, the actual annual percentage rate that reflects the finance charge imposed during the cycle may be separately stated for each feature [.] ▶ , or may be described as a composite for the whole plan. ◀ If separate rates are given, a composite annual percentage rate for the entire plan is optional. ***

SECTION 226.8 -- Identification of Transactions. ***

8(a) Sale Credit ***

8(a)(3) Copy of Credit Document Not Provided -- Creditor and Seller Not Same or Related Person(s) ***

2. Location of transaction. The disclosure of the location where the transaction took place generally requires an indication of both the city, and the state or foreign country. If the [creditor] ▶seller◀ has multiple stores or branches within that city, the creditor need not identify the specific branch at which the sale occurred. ***

▶ 4. Date of transaction -- foreign transactions. In a foreign transaction, the debiting date may be considered the transaction date. ◀ ***

SECTION 226.9 -- Subsequent Disclosure Requirements ***

9(c) Change in Terms

1. "Changes" initially disclosed. No notice of a change in terms need be given if the specific change is set forth initially, such as: rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an

employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion but does not include specific terms for an increase (for example, when an increase may occur [by vote of the board of directors).] ▶ under the creditor's contract reservation right to increase the periodic rates.) ◀ ***

SECTION 226.13 -- Billing Error Resolution ***

13(d) Rules Pending Resolution ***

13(d)(1) Consumer's Right to Withhold Disputed Amount; Collection Action Prohibited ***

2. Right to withhold payment. ▶ If the creditor is required to make the disclosure under footnote 30, the creditor may comply with that disclosure requirement by indicating that payment of any disputed amount is not required pending resolution. Making a disclosure that only refers to disputed amount would, of course, in no way affect the consumer's right under section 226.13(d)(1) to withhold related finance and other charges. ◀ The disclosure [that payment of any disputed amount is not required pending error-resolution] ▶ under footnote 30 ◀ need not appear in any specific place on the periodic statement ▶ , ◀ [and it] need not state the specific amount that the consumer may withhold [. The creditor] ▶ and ◀ may ▶ be preprinted ◀ [preprint] on [its] ▶ the ◀ periodic statement ▶ . ◀ [forms a statement that payment of any disputed amount is not required pending resolution.] ***

SECTION 226.14 -- Determination of Annual Percentage Rate ***

14(c) Annual Percentage Rate for Periodic Statements ***

8. Small finance charges. Section 226.14(c)(4) gives the creditor an alternative to section 226.14(c)(2) and (c)(3) if small [(50 cents or less) minimum or fixed fees are involved.] ▶ finance charges (50 cents or less) are involved; that is, if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents. ◀ For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an annual percentage rate of 30 percent under the rule in section 226.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1 1/2 percent per month. This option is consistent with the provision in footnote 11 to sections 226.6 and 226.7 permitting the creditor to disregard the effect of minimum charges in disclosing the ranges of balances to which periodic rates apply.

▶ 9. Daily rate with specific transaction charge. If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(d)-2 for guidance on the appropriate calculation methods. ◀ ***

14(d) Calculations Where Daily Periodic Rate Applied ***

2. Daily rate with specific transaction charge. If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, the calculation method in ▶ section 226.14(c)(3) ◀ [section 226.14(d)(2)] should be used. ▶ This requires a creditor to follow the rules in Appendix F in calculating the annual percentage rate, especially footnote 1 to Appendix F which addresses the daily rate/transaction charge situation by providing that the "average of daily balances" shall be used instead of the "sum of the balances."

Alternatively, the calculation method in section 226.14(d)(2) may be used. If this method is used, the creditor must also

- Apply the "without duplication" rule. (See comment 14(c)-5.)
- Disclose an annual percentage rate not less than the largest rate determined by multiplying each periodic rate imposed during the cycle by the number of periods in a year. ◀ ***

SECTION 226.15 -- Right of Rescission ***

15(a) Consumer's Right to Rescind

Paragraph 15(a)(1) ***

2. Exceptions. Although the consumer generally has the right to rescind with each transaction on the account, section 125(e) of the act provides an exception: until [March 31, 1985,] ▶ September 30, 1985 ◀ the creditor need not provide the right to rescind at the time of each credit extension made under an open-end credit plan secured by the consumer's principal dwelling to the extent that the credit extended is in accordance with a previously established credit limit for the plan. ▶ This limited rescission option is available whether or not the plan existed prior to the effective date of the act. ◀ The consumer will have the right to rescind each extension made after [March 31, 1985] ▶ September 30, 1985 ◀ under such a secured open-end credit plan, whether that plan was established before or after that date. ***

SECTION 226.16 -- Advertising ***

16(b) Advertisement of Terms That Require Additional Disclosures ***

▶ 6. Minimum, fixed, transaction, activity or similar charge. The charges to be disclosed under § 226.16(b)(1) are those that are considered finance charges under § 226.4. ◀ ***

SUBPART C -- CLOSED-END CREDIT

SECTION 226.17 -- General Disclosure Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1) ***

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

- A description of a grace period after which a late payment charge will be imposed. For example, the disclosure given under section 226.18(l) may state that a late charge will apply to "any payment received more than 15 days after the due date."
- A statement that the transaction is not secured. For example, the creditor may add a category labelled "unsecured" or "not secured" to the security interest disclosures given under section 226.18(m).
- The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that event will occur at a certain time.
- The conditions under which a demand feature may be exercised. For example, in a loan subject to demand after five years, the disclosures may state that the loan will become payable on demand in five years.
- When a variable rate feature is disclosed on other documents under footnote 43 to section 226.18(f), a reference to the variable rate feature and/or to other documents on which the variable rate disclosures are made.
- An explanation of the use of pronouns or other references to the parties to the transaction. For example, the disclosures may state, "'You' refers to the customer and 'we' refers to the creditor."
- Instructions to the creditor or its employees on the use of a multiple-purpose form. For example, the disclosures may state, "Check box if applicable."
- A statement that the borrower will pay a minimum finance charge upon prepayment. For example, when state law prohibits penalties for prepayment, the creditor may make the section 226.18(k)(1) disclosure by stating "You will be charged a minimum finance charge."
- Identification of the finance charge that is subject to a rebate. For example, the disclosure given under section 226.18(k)(2) may state that the borrower "will not be entitled to a refund of the prepaid finance charge."

- A brief reference to negative amortization in variable-rate transactions. For example, in the variable-rate disclosure, the creditor may include a short statement such as "Unpaid interest will be added to principal."

- A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as "Federal Truth in Lending Disclosures" or a descriptive title such as "Real Estate Loan Disclosures." ◀ ***

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1)

1. Legal obligation. The disclosures should reflect the credit terms to which the parties are legally bound at the outset of the transaction. ▶ The legal obligation is determined by applicable state law or other law. (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buydown transactions elsewhere in the commentary to section 226.17(c).) ◀

[- The legal obligation is normally determined by applicable state or other law, but certain transactions are specifically addressed in this commentary. (See, for example, the discussion of buydown transactions elsewhere in the commentary to section 226.17(c).)]

▶- It is not a violation of the regulation for a creditor, in disclosing the legal obligation, to omit the disclosure of a term that a court with jurisdiction over the creditor has previously deemed unenforceable on the basis of equity or other grounds.◀

- The fact that a [credit] ▶ term or ◀ contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that ▶ term or ◀ contract did not reflect the legal obligation.

[- The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement. But this presumption is rebutted if another agreement between the parties legally modifies that note or contract.]

2. Modification of obligation. ▶ The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement. But this presumption is rebutted if another agreement between the parties legally modifies that note or contract.◀ If the parties informally agree to a modification of the legal obligation, the modification should not be reflected in the disclosures unless it rises to the level of a change in the terms of the legal obligation. For example:

- If the creditor-employer offers a preferential employee rate, the disclosures should reflect the terms of the legal obligation. (See the commentary to section 226.18(f) for ▶ an example of a preferred-rate employee transaction that is a variable-rate transaction.) ◀ [a discussion of whether employee transactions are variable-rate transactions.)]

- If the contract provides for a certain monthly payment schedule but payments are made on a voluntary payroll deduction plan or an informal principal-reduction agreement, the disclosures should reflect the schedule in the contract.

- If the contract provides for regular monthly payments but the creditor informally permits the consumer to defer payments from time to time, for instance, to take account of holiday seasons or seasonal employment, the disclosures should reflect the regular monthly payments. ***

4. Consumer buydowns. In certain transactions, the consumer may pay an amount to the creditor to reduce the payments or [buy down the] ▶ obtain a lower ◀ interest rate on the transaction. Consumer buydowns must be reflected in the disclosures given for that transaction. To illustrate, in a mortgage transaction, the creditor and consumer agree to a note specifying a 14 percent interest rate. However, in a separate document, the consumer agrees to pay [four points] ▶ an amount ◀ to the creditor at consummation in return for a reduction in the interest rate to 12 percent for a portion of the mortgage term. ▶ The amount paid by the consumer may be deposited in an escrow account or may be retained by the creditor. Depending upon the buydown plan, the consumer's prepayment of the obligation may or may not result in a portion of the amount being credited or refunded to the consumer. ◀ In the disclosures given for the mortgage, the creditor must reflect the terms of the buydown agreement. For example:

- The [four points are] ▶ amount paid by the consumer is a ◀ prepaid finance charge[s] (even if deposited in an escrow account).

- A composite annual percentage rate must be calculated, taking into account both interest rates, as well as the effect of the prepaid finance charges.

- The payment schedule must reflect the multiple payment levels resulting from the buydown. ***

▶ 8. Graduated payment adjustable rate mortgages. These mortgages involve both a variable interest rate and scheduled variations in payment amounts during the loan term. Under these plans, a series of graduated payments may be scheduled before rate adjustments affect payment amounts, or the initial scheduled payment may remain constant for a set period before rate adjustments affect the payment amount. In either case, however, the initial payment amount is insufficient to cover the scheduled interest, causing negative amortization from the outset of the transaction. In these transactions, the disclosures are as follows:

- The finance charge includes the amount of negative amortization based on the assumption that the rate in effect at consummation remains unchanged.

- The amount financed does not include the amount of negative amortization, but includes only the amount of funds advanced to the consumer at the beginning of the loan term.

- As in any variable-rate transaction, the annual percentage rate is based on the terms in effect at consummation.

- The schedule of payments discloses the amount of any scheduled initial payments followed by an adjusted level of payments based on the initial interest rate. Since some mortgage plans contain limits on the amount of the payment adjustment, the payment schedule may need to contain several different levels of payments, even with the assumption that the original interest rate does not increase. ◀ ***

Comments 17(c)(1)-8 and 9 are redesignated 17(c)(1)-9 and 10, respectively.

Paragraph 17(c)(3) ***

▶ 2. Use of special rules. A creditor may utilize the special rules in section 226.17(c)(3) for purposes of calculating and making all disclosures for a transaction or may, at its option, use the special rules for some disclosures and not others. ◀

Paragraph 17(c)(4) ***

▶ 2. Use of special rule. A creditor may take advantage of this special rule for purposes of calculating and making some disclosures but may elect not to do so for all of the disclosures. For example, the variations may be ignored in calculating and disclosing the annual percentage rate but taken into account in calculating and disclosing the finance charge and payment schedule. ◀ ***

17(d) Multiple Creditors; Multiple Consumers

1. Multiple creditors. If a credit transaction involves more than one creditor:

- The creditors must choose which of them will make the disclosures.

- A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

- [Each creditor in the transaction is legally responsible for seeing that the disclosures are provided.]

- All disclosures for the transaction must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure. For example, if one of the creditors

is the seller, the total sale price disclosure under section 226.18(j) must be made, even though the disclosing creditor is not the seller. ***

17(h) Series of Sales--Delay in Disclosures ***

▶ 2. Basis of disclosures. Creditors have flexibility in structuring disclosures for a series of sales under section 226.17(h). For example, the total sale price may be computed as the cash price for the sale plus that portion of the finance charge and other charges applicable to that sale. ◀

17(i) Interim Student Credit Extensions

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

2. Basis of disclosures. The disclosures given at the time of execution of the interim note should reflect two annual percentage rates, one for the interim period and one for the repayment period. ▶ The disclosures should not be labelled as estimates. Any portion of the finance charge, such as statutory interest, that is attributable to the interim period and is paid by the student (either as a prepaid finance charge, periodically during the interim period, in one payment at the end of the interim period, or capitalized at the beginning of the repayment period) must be reflected in the interim annual percentage rate. ◀ Interest subsidies, such as payments made by either a state or the federal government on an interim loan, must be excluded in computing the annual percentage rate on the interim obligation, when the consumer has no contingent liability for payment of those amounts. [A loan guarantee fee that is paid separately by the student at the outset or withheld from the proceeds of the loan is a prepaid finance charge.] ▶ Any finance charges that are paid separately by the student at the outset or withheld from the proceeds of the loan are prepaid finance charges. An example of this type of charge is the loan guarantee fee. ◀ [That sum] ▶ The sum of the prepaid finance charges ◀ is deducted from the loan proceeds to determine the amount financed and included in the calculation of the finance charge. ***

▶ 5. Approved student credit forms. See the commentary to Appendix H regarding disclosure forms approved for use in certain student credit programs. ◀ ***

SECTION 226.18 -- Content of Disclosures ***

18(f) Variable Rate ***

2. Basis for disclosures. For transactions subject to the requirements of section 226.18(f), the disclosures must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. ▶ The disclosures, although subject to change, are not estimates and should not be labelled as such. ◀ However, in a variable-rate transaction with either a seller buydown that is reflected in the credit contract or a consumer buydown, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the lower rate for the buydown period and the rate that is the basis of the variable rate feature for the remainder of the term. (See the commentary to section 226.17(c) for a discussion of buydown transactions.) ***

▶ 6. Growth equity mortgages. Also referred to as payment escalated mortages, these mortgage plans involve scheduled payment increases, rather than interest rate increases. The initial payment amount is determined for a long-term loan with a fixed interest rate. The rate remains constant, but payment increases are scheduled annually, based on a percentage of a given index. Because the interest rate remains constant and additional amounts are not required to pay off increased interest, the larger payments result in accelerated amortization of the loan. In disclosing these mortgage plans, creditors may either estimate the amount of payment increases, based on the best information reasonably available, or may disclose by analogy to the variable rate disclosures. Using the latter option, creditors would indicate that the payments are subject to increase, describe the circumstances under which the payments would increase, together with limitations on the increase, and provide an example of the increase. (This discussion does not apply to growth equity mortgages in which the amount of payment increases can be accurately determined at the time of disclosure. For these mortgages, as for graduated payment mortgages, disclosures should reflect the scheduled increases in payments.) ◀ ***

Paragraph 18(f)(3)

1. Effects. Disclosure of the effect of an increase refers to an increase in the number or amount of payments or an increase in the final payment. ▶ In addition, the creditor may make a brief reference to negative amortization that may result from a rate increase. (See comment 17(a)(1)-5 regarding directly related information.) ◀ If the effect cannot be determined, the creditor must provide a statement of the possible effects. For example, if the exercise of the variable-rate feature may result in either more or larger payments, both possibilities must be noted.

Paragraph 18(f)(4)

1. Hypothetical example. The example may, at the creditor's option, appear apart from the other disclosures. The creditor may provide either a standard example that represents the general type of credit offered by that creditor

or an example that directly reflects the terms and conditions of the particular transaction. ▶ (The example, whether general or specific, should not reflect an immediate increase if the contract does not permit an immediate increase.) ◀

[2. Demand obligations. In demand obligations with no alternate maturity date, the creditor need not provide a hypothetical example.]

▶ 2. Hypothetical example not required. The creditor need not provide a hypothetical example in the following transactions with a variable rate feature:

- Demand obligations with no alternate maturity date.
- Interim student credit extensions.
- Multiple advance construction loans disclosed pursuant to Appendix D, Part I. ◀

18(g) Payment Schedule

1. Amounts included in repayment schedule. The repayment schedule should reflect all components of the finance charge, not merely the portion attributable to interest. ▶ Prepaid finance charges, however, should not be shown in the repayment schedule. ◀ The payments may include amounts beyond the amount financed and finance charge. For example, the disclosed payments may, at the creditor's option, reflect certain insurance premiums where the premiums are not part of either the amount financed or the finance charge, as well as real estate escrow amounts such as taxes added to the payment in mortgage transactions. ***

Paragraph 18(g)(2)

1. Abbreviated disclosure. The creditor may disclose an abbreviated payment schedule when the amount of each regularly scheduled payment (other than the first or last payment) includes an equal amount to be applied on principal and a finance charge computed by application of a rate to the decreasing unpaid balance. This option is also available when mortgage-guarantee insurance premiums, paid either monthly or annually, cause variations in the amount of the scheduled payments, reflecting the continual decrease ▶ or increase ◀ in the premium due. The creditor using this alternative must disclose the dollar amount of the highest and lowest payments and make reference to the variation in payments. ***

18(i) Demand Feature ***

2. Covered demand features. The type of demand feature triggering the disclosures required by section 226.18(i) includes only those demand features contemplated by the parties as part of the legal obligation. For example, this provision does not apply to transactions that convert to a demand status as a result of the consumer's default. ▶ A due-on-sale clause is not considered a demand feature. ◀ ***

18(k) Prepayment ***

Paragraph 18(k)(1)

1. Penalty. This applies only to those transactions in which the interest calculation takes account of each ▶ scheduled ◀ reduction in principal. The term "penalty" as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are not penalties include, for example:

- Prepaid finance charges collected at the outset of the transaction, such as points in a mortgage loan.
- Loan guarantee fees.
- Interim interest on a student loan.

However, a minimum finance charge is a penalty in a simple-interest transaction. ▶ (See comment 17(a)(1)-5 regarding the disclosure of a minimum finance charge as directly related information.) ◀

Paragraph 18(k)(2)

1. Rebate of finance charge. This applies to any finance charges that do not take account of each reduction in the principal balance of an obligation. This category includes, for example:

- Precomputed finance charges such as add-on charges.
- Charges that take account of some but not all reductions in principal, such as mortgage guarantee insurance assessed on the basis of an annual declining balance, when the principal is reduced on a monthly basis.
- Prepaid finance charges, such as points or loan fees collected at the outset of the transaction.

▶ The creditor may identify the finance charge that is subject to a rebate. (See comment 17(a)(1)-5 regarding directly related information.) ◀ No description of the method of computing earned or unearned finance charges ▶ , however, ◀ is required or permitted as part of the segregated disclosures under this section, although such information may be provided elsewhere in the contract. ***

18(r) Required Deposit ***

▶ 2. Pledged account mortgages. In these transactions, a consumer pledges as collateral funds that the consumer deposits in an account held by the creditor. The creditor withdraws sums from this account to supplement the consumer's

monthly payments. Creditors may treat these pledged accounts as required deposits (unless the accounts are excepted under footnote 45) or they may treat them as consumer buydowns in accordance with comment 17(c)(1)-4. ◀ ***

Comments 18(r)-2, 3, 4, and 5 are redesignated 18(r)-3, 4, 5, and 6, respectively.

SECTION 226.19 -- Certain Residential Mortgage Transactions

19(a) Time of Disclosure ***

2. Timing and use of estimates. Truth in Lending disclosures must be given (a) before consummation or (b) within three business days after the creditor receives the consumer's written application, whichever is earlier. The three-day period for disclosing credit terms coincides with the time period within which creditors subject to RESPA must provide good faith estimates of settlement costs. If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under section 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as "all numerical disclosures except the late-payment disclosure are estimates") instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (See the commentary to section 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms [,either on a separate document or on the same document (but separate from the required disclosures).] ▶ in accordance with comment 17(a)(1)-5. ◀ ***

SECTION 226.20 -- Subsequent Disclosure Requirements

20(a) Refinancings ***

3. Variable rate. ▶ Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, the addition of a variable-rate feature to an obligation is a new transaction requiring new disclosures. ◀ If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, a renegotiable rate mortgage that was disclosed as a variable-rate transaction is not subject to new disclosure requirements when the variable-rate feature is invoked. However, if the variable-rate feature was not previously disclosed, a later change in the rate results in a new transaction subject to new disclosures. ***

▶ 5. Coverage. Section 226.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A "refinancing" by any other person is a new transaction under the regulation, not a refinancing under this section. ◀ ***

20(b) Assumptions

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

- A residential mortgage transaction.
- An express acceptance of the subsequent consumer by the creditor.
- A written agreement.

▶ The assumption of a non-exempt consumer credit obligation with no change in terms requires no disclosures unless all three elements are present. ◀ ***

6. Change in terms. [A change in terms destroys the existing obligation and the transaction is treated as a new transaction under the regulation, not as an assumption. A change in terms includes, for example:] ▶ In order to be covered or excluded by section 226.20(b), the assumption must involve no significant change in the terms of the existing obligation. If the adoption of the obligation by a new obligor is accompanied by a significant change in terms, whether and when disclosures must be given are governed by the general requirements for a new transaction, not by section 226.20(b). Significant changes in terms include, for example: ◀

- A change in the contract interest rate unless the change is in accordance with a variable-rate feature that was properly disclosed in the existing obligation.
- A change in the length of the term.
- The addition of points.

▶ Insignificant changes in terms ◀ [Minor changes that do not destroy the existing obligation] include, for example:

- Assumption fees for processing loan documents.
- Insurance fees.
- Credit report fees. ***

SECTION 226.22 -- Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate

Paragraph 22(a)(1) ***

4. Basis for calculations. When a transaction involves "step rates" or "split rates" -- that is, different rates applied at different times or to different portions of the principal balance -- a single composite annual percentage rate

must be calculated and disclosed for the entire transaction. ▶ Assume, for example, a $10,000 loan repayable in 5 years at 10 percent interest for the first 2 years, 12 percent for years 3 and 4, and 14 percent for year 5. The monthly payments are $210.71 during the first 2 years of the term, $220.25 for years 3 and 4, and $222.59 for year 5. The composite annual percentage rate, using a calculator with a "discounted cash flow analysis" or "internal rate of return" function, is 10.75 percent. ◀ ***

SECTION 226.24 -- Advertising ***

24(b) Advertisement of Rate of Finance Charge ***

▶ 2. Rate of finance charge. An advertisement may not state an effective rate or payment rate applicable to only a portion of the term of the transaction unless the annual percentage rate is also stated. For example, an advertisement that states "qualify at 10 1/2%" or "an effective first year interest rate of 10 1/2%" generally shows only a portion of the rate of finance charge that actually accrues during the early years of the term; the advertised annual percentage rate that must accompany this rate must take into account the interest that will accrue but not be paid during this period. On the other hand, since an advertisement that states "financing available at 3 1/2% below prime" does not state a specific rate or portion of the finance charge, section 226.24(b) does not apply and the annual percentage rate is not a required disclosure. ◀ ***

Comments 24(b)-2 and 3 are redesignated 24(b)-3 and 4, respectively.

APPENDIX D -- Multiple-Advance Construction Loans ***

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

3. Calculation of the total of payments. When disclosures are made pursuant to Appendix D, the total of payments may reflect either the sum of the payments or the sum of the amount financed and the finance charge.

4. Annual percentage rate. Appendix D does not require the use of Volume I of the Board's Annual Percentage Rate Tables for calculation of the annual percentage rate. Creditors utilizing Appendix D in making calculations and disclosures may use other computation tools to determine the estimated annual percentage rate, based on the finance charge and payment schedule obtained by use of the appendix. ***

APPENDIX F -- Annual Percentage Rate Computations for Certain Open-End Credit Plans

1. Daily rate with specific transaction charge. If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(d)-2 for guidance on the appropriate calculation methods. ***

APPENDIX H -- Closed-End Model Forms and Clauses ***

17. ED-876 1/82. Pursuant to section 113(a) of the amended Truth in Lending Act, Form ED-876 1/82, issued by the U.S. Department of Education for certain student loans, has been approved. The form may be used for all PLUS loans when there is no deferment before the borrower begins repayment of both principal and interest. The form may also be used for PLUS loans when the borrower qualifies for a deferment of principal payments and the annual percentage rate to be disclosed is calculated taking account of the irregular payment schedule. The form may also be used for consolidation of previous PLUS loans, whether or not the borrower had a deferment of principal payments under the earlier loans. The following changes may be made to the form:

- Reducing the size of the form.
- Adding lines to the payment schedule disclosure.
- Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, or circling applicable items.

18. ED-876A 4/82. Pursuant to section 113(a) of the amended Truth in Lending Act, Form ED-876A 4/82, issued by the U.S. Department of Education for certain student loans, has been approved. This form may be used for all PLUS loans where the borrower qualifies for an immediate deferment of principal payments under the terms of the note. (See the commentary to section 226.17(i) for the basis of disclosures.) The following changes may be made to the form:

- Reducing the size of the form.

- Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, or circling applicable items. ◀ ***

* * * * *

Board of Governors of the Federal Reserve System, May 6, 1982.

(signed) William W. Wiles
William W. Wiles
Secretary of the Board

[SEAL]

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Reg. M; CL-1]

Consumer Leasing; Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation.

SUMMARY: In accordance with 12 CFR 213.1(d), the Board's staff is publishing a final official staff commentary to Regulation M (Consumer Leasing). The commentary applies and interprets the requirements of the regulation and is intended to replace individual Board and staff interpretations. Good faith compliance affords lessors protection from civil liability under section 130(f) of the Truth in Lending Act.

EFFECTIVE DATE: May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Claudia J. Yarus or Steve Zeisel, Staff Attorneys (202–452–3667), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) *Introduction.* The Board adopted Regulation M (46 FR 20949, April 7, 1981), effective April 1, 1981, to implement the consumer leasing provisions of the Truth in Lending Act. The leasing rules were formerly contained in Regulation Z, 12 CFR Part 226. Compliance with the new regulation becomes mandatory on October 1, 1982 (Pub. L. 97–110, Dec. 26, 1981). Until that time, lessors may comply with either Regulation M or the previous version of Regulation Z.

The Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96–221) made extensive revisions to the credit provisions of Truth in Lending, but it affected consumer leasing only slightly. When Regulation Z was revised in 1981, the leasing rules were removed and consolidated as Regulation M. Apart from a few minor changes warranted by the amendments to the act, Regulation M adopted almost verbatim the leasing rules of Regulation Z.

The commentary modifies the staff's approach to providing interpretations of the leasing provisions formerly in Regulation Z. Under the previous regulation, individual staff opinions were issued in response to inquiries about specific fact situations and were normally limited to those facts. While this commentary provides specific guidance and examples, it employs language that is of more general application for use by the widest possible audience. The commentary attempts to provide sufficient guidance without overburdening the industry with excessive detail and multiple research sources. As the vehicle for additional staff interpretations, it will be revised periodically to address new questions.

The final commentary adopts the substance of most of the individual leasing interpretations issued under previous Regulation Z. However, interpretations have not been incorporated if they repeat information found elsewhere, if they have been rendered valueless by the passage of time, or if they deal with facts that are unique or too particular to warrant treatment in the commentary. Previous staff opinion letters, whether official or unofficial, can provide no certain guidance in complying with Regulation M. They were issued as interpretations of previous Regulation Z only and are entirely superseded by this commentary for purposes of interpreting Regulation M. Of course, they may still be utilized by courts and administrative agencies in determining liability for violations of the previous Regulation Z leasing provisions.

A proposed version of the commentary was published in **Federal Register** on October 13, 1981 (46 FR 50380) and elicited 22 responses from lessors, trade associations and one Reserve Bank. Numerous changes to the substance of the proposal were requested; many have been adopted in the final commentary. Several comments reflected confusion about the meaning of certain provisions. Those provisions have been revised and clarified. In addition, many minor editorial and structural changes suggested by commenters have been incorporated.

To accommodate substantive and editorial changes, some sections of the commentary were restructured, and comments were added or deleted as necessary. As a result, the location of a comment may differ from its original location in the proposal. In general, the staff has attempted to place comments in the single most appropriate and useful place, providing cross-references where necessary.

Some of the provisions in the commentary that were changed substantively from the proposal are listed below. The list is not exhaustive; it is merely intended to give examples of the types of changes that have been made.

Section 213.2—Definitions and Rules of Construction

- Comment 2(a)(8)–1 discusses when an assignee may be considered a lessor.
- Comment 2(a)(15)–2 identifies disclosable security interests.
- Comment 2(a)(17)–3 clarifies the components of the periodic payments which are used to calculate the total lease obligation.

Section 213.4—Disclosures

- Comments 4(a)–1 through –5 describe the basis of disclosures, minor variations, form of disclosures, number of transactions and treatment of rebates in lease transactions.
- Comment 4(a)(2)–3 explains who makes disclosures in multiple lessor transactions and who receives disclosures in multiple lessee transactions.
- Comment 4(g)(15)–3 discusses when taxes are included in the total lease obligation.
- Comments 4(h)–1 through –10 explain the relationship between renegotiations and extensions and clarify how the lessor determines when there is either a renegotiation or an extension.

Commenters suggested some modifications to the commentary that are incorporated at this time. The modifications concerned issues such as calculating the total contractual obligation for purposes of the consumer lease definition in § 213.2(a)(6), and changes to the definition of "consummation." These changes were not anticipated in the proposal and did not receive adequate comment. However, they may be the subject of clarification or adjustment in a future commentary revision.

Other suggested changes were not made because they were contrary to requirements in both the regulation and statute. The staff is currently studying the Consumer Leasing Act to assist the Board in determining whether to recommend statutory amendments to Congress.

[Enc. Cir. No. 9298]

SUMMARY
(Complete Text published in Fed. Reg. May 13, 1982)

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Reg. M; CL-1]

Consumer Leasing; Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation.

SUMMARY: In accordance with 12 CFR 213.1(d), the Board's staff is publishing a final official staff commentary to Regulation M (Consumer Leasing). The commentary applies and interprets the requirements of the regulation and is intended to replace individual Board and staff interpretations. Good faith compliance affords lessors protection from civil liability under section 130(f) of the Truth in Lending Act.

EFFECTIVE DATE: May 12, 1982.

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The commentary modifies the staff's approach to providing interpretations of the leasing provisions formerly in Regulation Z. Under the previous regulation, individual staff opinions were issued in response to inquiries about specific fact situations and were normally limited to those facts. While this commentary provides specific guidance and examples, it employs language that is of more general application for use by the widest possible audience. The commentary attempts to provide sufficient guidance without overburdening the industry with excessive detail and multiple research sources. As the vehicle for additional staff interpretations, it will be revised periodically to address new questions.

The final commentary adopts the substance of most of the individual leasing interpretations issued under previous Regulation Z. However, interpretations have not been incorporated if they repeat information found elsewhere, if they have been rendered valueless by the passage of time, or if they deal with facts that are unique or too particular to warrant treatment in the commentary. Previous staff opinion letters, whether official or unofficial, can provide no certain guidance in complying with Regulation M. They were issued as interpretations of previous Regulation Z only and are entirely superseded by this commentary for purposes of interpreting Regulation M. Of course, they may still be utilized by courts and administrative agencies in determining liability for violations of the previous Regulation Z leasing provisions.

A proposed version of the commentary was published in Federal Register on October 13, 1981 (46 FR 50380) and elicited 22 responses from lessors, trade associations and one Reserve Bank. Numerous changes to the substance of the proposal were requested; many have been adopted in the final commentary. Several comments reflected confusion about the meaning of certain provisions. Those provisions have been revised and clarified. In addition, many minor editorial and structural changes suggested by commenters have been incorporated.

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Complete Text
(Fed. Reg., May 13, 1982)

[Ref. Cir. No. 9298]

statute. The staff is currently studying the Consumer Leasing Act to assist the Board in determining whether to recommend statutory amendments to Congress.

List of Subjects in 12 CFR Part 213

Advertising; Banks, banking; Consumer protection; Federal Reserve System; Leasing; Penalties; Truth in lending.

Authority. 15 U.S.C. 1640(f).

Part 213 is amended by adding Supplement I to read as follows:

SUPPLEMENT I—CL-1—Official Staff Commentary to Regulation M

Introduction

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M, effective April 1, 1981. Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 1640). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Under section 213.1(d) of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the Federal Register. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Status of previous interpretations.* All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until October 1, 1982, only insofar as they interpret that regulation. When compliance with Regulation M becomes mandatory on October 1, 1982, the Board and staff interpretations of the previous Regulation Z leasing provisions will be entirely superseded by Regulation M and this commentary, except with regard to liability under the previous regulation.

4. *Rules of construction.* (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as "including, but not limited to," "among other things," "for example," or "such as."

(b) Throughout the commentary and regulation, reference to the regulation should be construed to refer to Regulation M, unless the context indicates that a reference to previous Regulation Z (12 CFR Part 226) is also intended.

(c) Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment.

5. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to section 213.4(a) are further divided by subparagraph, such as comment 4(a)(1)-1 and comment 4(a)(1)-2. In other cases, comments have more general application and are designated, for example, as comment 4(a)-1. This introduction may be cited as comments I-1 through I-6. The appendices may be cited as comments app. C-1 and app. C-2.

6. *Cross-references.* The following cross-references to related material appear at the end of each section of the commentary: (a) "Statute"—those sections of the Truth in Lending Act on which the regulatory provision is based; (b) "Other sections"—other provisions in the regulation necessary to understand that section; (c) "Previous regulation"—parallel provisions in previous Regulation Z; and (d) "1981 changes"—a brief description of the major regulatory changes made when the leasing rules were moved from previous Regulation Z to Regulation M.

Section 213.1—General Provisions

1. *Foreign applicability.* Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents (including resident aliens) of any state as defined in § 213.2(a)(16). The regulation does not apply to a foreign branch of a U.S. bank or leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

2. *Issuance of staff interpretations.* This commentary is the method by which the staff provides interpretations that afford formal protection under section 130(f) of the act. This commentary may be amended periodically.

References:

Statute: §§ 102(b), 105, and 130(f).
Previous regulation: § 226.1.
1981 changes: None.

Section 213.2—Definitions and Rules of Construction

2(a) Definitions.

2(a)(2) "Advertisement"

1. *Coverage.* Only commercial messages that promote consumer lease transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of consumer leases, whether in visual, oral, or print media, are covered by the definition. The list of examples in the definition is not exhaustive; telephone solicitations and letters sent to customers as part of an organized solicitation of business, for example, are also advertisements. The term does *not* include the following:

- Direct personal contacts, such as follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.
- Informational material distributed only to businesses.
- Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.
- News articles, the use of which is controlled by the news medium.
- Market research or educational materials that do not solicit business.

2. *Persons covered.* See the commentary to § 213.5(a).

2(a)(4) "Arrange for lease of personal property"

1. *General.* The definition of lessor in § 213.2(a)(8) includes one who, in the ordinary course of business, regularly arranges for the leasing of personal property. For example:

- An automobile dealer who,

pursuant to a business relationship, completes the necessary lease agreement before forwarding it to the leasing company (to whom the obligation is payable on its face) for execution is "arranging" for the lease.

• An automobile dealer who, receiving no fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not "arranging" for the lease.

2. *Multiple lessors.* See the commentary to § 213.4(c).

3. *Consideration.* The term "other consideration" refers to an actual payment corresponding to a fee or similar compensation. It does not refer to intangible benefits, such as the advantage of increased business, that may flow from the relationship between the parties.

2(a)(6) "Consumer lease".

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If some question exists as to the primary purpose for a lease, the lessor is, of course, free to make the disclosures, and the fact that disclosures are made in such circumstances is not controlling on the question of whether the transaction was exempt. The primary purpose of a lease is generally determined before or at consummation and a subsequent change in primary usage is governed by § 213.4(e).

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than 4 months. Thus, a lease of personal property for 4 months, 3 months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond 4 months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. A lease with a penalty for cancelling during the first 4 months is considered to have a term of more than 4 months. A month-to-month or week-to-week extension of a lease that was originally for 4 months or less is not a consumer lease, even if the extension actually lasts for more than 4 months. For example, a 3-month lease extended on a month-to-month basis and terminated after 1 year does not require consumer lease disclosures.

3. *Organization.* A consumer lease does not include a lease made to an organization, as defined in § 213.2(a)(9). A lease to an organization is outside the requirements of the regulation even if the property is used (by an employee, for example) primarily for personal, family or household purposes. Likewise, a lease made to an organization is not a consumer lease even if it is guaranteed by or subsequently assigned to a natural person.

4. *Credit sale.* A lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), is not a consumer lease. Regulation Z defines a credit sale, in part, as "a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer—

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

(ii) 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."

5. *Safe deposit boxes.* A lease of a safe deposit box is not a consumer lease for purposes of this regulation.

6. *Leases of personal property incidental to a service.* The following leases of personal property that are incidental to services are not consumer leases subject to the requirements of the regulation:

• Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

• Burglar alarm systems requiring the installation of leased equipment that triggers a telephone call when a home is burglarized.

2(a)(7) "Lessee".

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

2(a)(8) "Lessor".

1. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances such as those described in "Ford Motor Credit Co. v. Cenance," 452 U.S. 155, 101 S.Ct. 2239 (1981). In that case, the Supreme Court held that an assignee was a creditor for purposes of previous Regulation Z because of its substantial involvement in the credit transaction.

2(a)(9) "Organization".

1. *Coverage.* The term includes joint ventures and persons operating under a business name.

2(a)(12) "Personal property".

1. *Coverage.* Whether property is considered personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

2(a)(14) "Realized value".

1. *General.* Realized value is not a required disclosure. It refers to the value of the property at early termination or at the end of the lease term. It may be either the retail or wholesale value. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term is the difference between the estimated value of the property and its realized value.

2. *Options.* Subject to the contract and to state or other applicable law, the lessor may choose any of the 3 methods for calculating the realized value in determining the lessee's liability at the end of the lease term or at early termination. If the lessor sells the property prior to making that determination, the price received for the property is the realized value. If the lessor does not sell the property prior to making that determination, the lessor may choose either the highest offer or the fair market value as the realized value.

3. *Exclusions.* The realized value may exclude any amount attributable to taxes.

4. *Disposition charges.* Disposition charges may not be subtracted in determining the realized value. If the lessor charges the lessee a fee to cover the disposition expenses, the fee must be disclosed at consummation under § 213.4(g)(5). Disposition charges may be estimated in accordance with § 213.4(d), and this does not prevent the lessor from collecting the actual disposition costs incurred.

5. *Offers.* In determining the highest offer for disposition, the lessor need not consider offers that the offeror has withdrawn or is unable or unwilling to perform.

6. *Appraisals.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act and § 213.4(g)(14); those provisions refer to the lessee's right to an independent professional appraisal.

2(a)(15) "Security interest".

1. *Coverage.* The list of security interests in the definition is not exhaustive. Other than those listed, only interests that are security interests

under state or other applicable law are encompassed by the definition. For example, any interest the lessor may have in the leased property falls within this definition only if it is considered a security interest under state or other applicable law.

2. *Disclosable interests.* For purposes of the regulation, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this regulation.

3. *Insurance.* The lessor's right to insurance proceeds or unearned insurance premiums is not a security interest for purposes of this regulation.

2(a)(17) "Total lease obligation".

1. *Disclosure.* The total lease obligation is disclosed under § 213.4(g)(15)(i). It is relevant only to so-called open-end leases in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property and its realized value.

2. *Periodic payments: disclosure distinguished.* Certain items that may be paid periodically are not part of the lessee's total lease obligation. Therefore, the amount of the scheduled periodic payments for purposes of calculating the total lease obligation may be less than the amount of the periodic payments disclosed under § 213.4(g)(3).

3. *Periodic payments: inclusions and exclusions.* The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation is composed of the following items:

- Any portion of the periodic payments attributable to depreciation, cost of money, and profit.
- Taxes in some cases. See the commentary to § 213.4(g)(15).
- The capitalized cost of mechanical breakdown protection contracts.

The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation does *not* include the following:

- Any amount not paid periodically.
- Any portion or periodic payments attributable to official fees, registration, certificate of title, or license fees.
- Taxes in some cases. See the commentary to § 213.4(g)(15).

At the lessor's option, the capitalized cost of service contracts and insurance premiums may be either included or excluded from this calculation.

4. *Initial payments.* The following amounts are *not* included among the payments at consummation when calculating the total lease obligation:

- Refundable security deposits.
- Official fees and charges disclosable under § 213.4(g)(4).
- "Other charges" disclosable under § 213.4(g)(5).
- The cost of a mechanical breakdown protection contract purchased at consummation.

5. *Estimated value.* See the commentary to § 213.4(d) regarding the use of estimates and § 183(a) of the act regarding the criteria for estimating the value of the leased property at the end of the lease term.

2(a)(18) "Value at consummation".

1. *Disclosure.* The value at consummation is relevant only to so-called open-end leases and is disclosed and subtracted from the total lease obligation under § 213.4(g)(15)(i).

2. *Taxes.* The value at consummation includes taxes paid by the lessor in connection with the acquisition of leased property and amortized over the lease term. See the commentary to § 213.4(g)(15).

3. *Other amounts.* The definition of the value at consummation explicitly permits the lessor to include a profit or markup (without separate itemization). The lessor may include costs of doing business, such as insurance that the lessor purchases on its own behalf. See the commentary to § 213.4(g)(6). The lessor may not include in this amnount other items (such as maintenance or extended warranty insurance) that are purchased by the lessee.

2(b) Rules of construction.

1. *Footnotes.* Material that appears in a footnote has the same legal weight as material in the body of the regulation.

2. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other applicable law; the regulation does not make that determination. Consummation does not occur merely because the lessee has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

References

Statute: Sections 103(g) and 181.
Previous regulation: § 226.2.
1981 changes: "Agricultural purpose" has been slightly revised to conform to the amended act.

Section 213.3—Exempted Transactions

References

Statute: § 105(a).
Previous regulation: § 226.3(f).
1981 changes: None.

Section 213.4—Disclosures

4(a) General requirements.

1. *Basis of disclosures.* The regulation assumes that parties will perform fully according to the lease terms. For example:

- In a 3-year lease with a 1-year minimum term after which there is no penalty for termination, disclosures should be based on the full 3-year term of the lease. The 1-year minimum term is only relevent to the early termination provisions of § 213.4(g) (12), (13), and (14).

2. *Minor variations.* The lessor may disregard the effects of the following in making calculations and disclosures:

- That payments must be collected in whole cents.
- That dates of scheduled payments may be changed because the scheduled date is not a business day.
- That months have different numbers of days.

3. *Form of disclosures.* In making disclosures lessors may cross-reference rather than repeat items that are disclosed elsewhere in the lease disclosure statement. In addition, when a required disclosure consists of a single charge, lessors do not have to repeat the charge as an itemization and a total amount. See the commentary to § 213.4(g) (5) and (15).

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

- When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.
- When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: a single lease

transaction or a lease and credit sale transaction.

5. *Rebates.* In a lease transaction, a seller's or manufacturer's rebate may be offered to prospective lessees. At the lessor's option, these rebates may be either reflected in or disregarded in the lease disclosures required under the regulation. If the lessor chooses to reflect the rebate in the leasing disclosures, it may be taken into account in any manner as part of those disclosures.

Paragraph 4(a)(1).

1. *Clearly, conspicuously and in meaningful sequence.* This standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no particular mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. Appendix C contains model forms that meet this standard, although lessors are not required to use these forms. The requirement that disclosures be made clearly and conspicuously does not mean that they must be more conspicuous than other terms in a combined contract-disclosure statement, nor does it preclude the use of a multi-purpose disclosure form that enables the lessor to designate the specific disclosures applicable to a given transaction. See the commentary to Appendix C.

2. *Type size.* The term "point" in the phrase "10-point type" is a printing term that refers to the size of the body of the type, as distinguished from the size of the type face which may vary among different print manufacturers.

Paragraph 4(a)(2).

1. *Consummation.* See the commentary to § 213.2(b).

2. *Identification of parties.* While disclosures must always be made clearly and conspicuously, it is not necessary to use the words "lessor" or "lessee" when identifying those parties.

3. *Mutiple lessors and multiple lessees.* In transactions involving multiple lessors and lessees, the disclosure statement must identify all the lessors and lessees; however, § 213.4(c) permits a single lessor to make all the disclosures to a single lessee.

4. *Integrated lease/disclosure forms.* Contract terms or disclosures that are not required by the regulation may be added to the disclosure statement so long as the required disclosures are made together on a single page (which may include both sides) and above the place for the lessee's signature. Generally, other terms and disclosures may precede, follow, or be intermingled with the regulation's disclosures within the limits of § 213.4(b) governing the use of additional information and the clear, conspicuous, and meaningful sequence disclosure standard in § 213.4(a)(1).

5. *Lessee's signature.* The regulation does not require the lessee to sign the disclosures but, if disclosures are combined with contract terms, the lessor may require the lessee's signature for contract or evidentiary purposes. In such a case, the disclosures must be made above the place for the lessee's signature. When disclosures and contract terms appear on both sides of a page, the consumer's signature usually appears on the bottom of the second side. For purposes of the regulation, the consumer's signature may appear on the bottom of the first side if all the disclosures appear on that side.

Paragraph 4(a)(4).

1. *Permissible uses.* If the lessor chooses to provide foreign-language translations of the disclosures or is required to do so by state, federal, or local law, the translations are not inconsistent per se with disclosures under the regulation and may be provided as additional information under § 213.4(b).

2. *Advertisements in Puerto Rico.* The requirement for providing English disclosures upon request does not apply to advertisements subject to § 213.5 of the regulation.

4(b) Additional information.

1. *State law disclosures.* If state law disclosures are not inconsistent with the act and regulation under § 213.7, the lessor may make those disclosures in accordance with the first sentence of this paragraph. If state law disclosures are inconsistent under § 213.7 and the lessor elects to make them, it must do so in accordance with the second sentence of this paragraph.

4(c) Multiple lessors; multiple lessees.

1. *Multiple lessors.* If a lease transaction involves more than one lessor, the lessors may choose which of them will make the disclosures. All disclosures for the transaction must be given, even if the disclosing lessor would not otherwise have been obligated to make a particular disclosure.

4(d) Unknown-information estimate.

1. *Time of estimated disclosure.* The lessor may use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made. For example:

- Section 213.4(g)(4) requires the lessor to disclose the total amount payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes. If these amounts are subject to indeterminable increases or decreases over the course of the lease, the lessor may estimate its disclosures based on the rates or charges in effect at the time of disclosure.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The "reasonably available" standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor normally may rely on the representations of other parties in obtaining information. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery.

3. *Estimated value of leased property at termination.* When the lessee's liability at the end of the lease term is based on the estimated value of the leased property (see § 213.4(g)(15)), the estimate must be reasonable and based on the best information reasonably available to the lessor. That standard permits a lessor to use a generally accepted trade publication listing estimated current or future market prices for the leased property, rather than investing in the most sophisticated computer equipment to derive the estimated value at the end of the lease term. The lessor should rely on other information, its experience, or reasonable belief, if those sources provide the best information. For example:

- An automobile lessor offering a 3-year open-end lease intends to assign a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimated value a wholesale value derived from a credible trade publication listing current wholesale values, if the trade

publication is the best information available.

• Same facts as above, except that the lessor discloses an estimated value derived by adjusting the value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used vehicle markets. The lessor may adjust estimated values quoted in trade publications based on the lessor's experience or reasonable belief that such values will be understated or overstated.

4. *Retail or wholesale value.* The lessor may choose either a retail or a wholesale value in estimating the value of the leased property at termination, provided that choice is consistent with the lessor's general practice or intention when determining the value of the property at the end of the lease term.

5. *Labelling estimates.* Generally, only the particular disclosure for which the exact information is unknown is labelled as an estimate. However, when several disclosures are affected because of the unknown information, the lessor has the option of labelling as an estimate either every affected disclosure or only the disclosure primarily affected.

6. *Understating the estimated value.* In non-purchase-option leases, the lessor may not use a value lower than that indicated by the best information available when disclosing the estimated value of leased property at the end of the lease term under § 213.4(g)(15).

4(e) Effect of subsequent occurrence.

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

• A change from a monthly to a weekly payment schedule.

• The addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease.

• An increase in official fees or taxes. See the commentary to § 213.4(d).

• An increase in insurance premium or coverage caused by a change in law.

• Late delivery of an automobile caused by a strike.

• 2. *Redisclosure.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.4(h).

4(g) Specific disclosure requirements.

1. *Inapplicable disclosures.* The disclosures required by this section need be made only as applicable. Any disclosure not relevant to a particular transaction may be eliminated entirely. For example, if the lessor does not take a security interest, no disclosure is required under § 213.4(g)(9). See the commentary to Appendix C.

2. *Other required disclosures.* The disclosure statement must include the date and identify the lessor and the lessee. See the commentary to § 213.4(a)(2). The lessor need only be identified by name; no address is required.

Paragraph 4(g)(1).

1. *Multiple-item lease.* In a multiple-item lease, the property may be described in separate statements as provided in § 213.4(a)(3).

Paragraph 4(g)(2).

1. *Itemization not required.* The lessor must disclose one total initial payment amount and identify the components of this one amount (for example, capitalized cost reduction, mechanical breakdown protection, registration fees). The lessor may, but need not, disclose the dollar amount of each component.

2. *Consummation.* See the commentary to § 213.2(b).

3. *Fees payable upon delivery.* This provision does not apply to fees paid at delivery, when delivery occurs after consummation. For example:

• The lessee agrees to pay registration fees, sales taxes, and a delivery charge in one lump sum on the date the automobile is delivered, some time after consummation. None of these charges is an initial payment under § 213.4(g)(2) because they are paid after consummation of the lease. The registration fees and sales taxes are disclosed under § 213.4(g)(4), and the delivery charge is disclosed as an "other charge" under § 213.4(g)(5).

Paragraph 4(g)(3).

1. *Itemization not required.* Section 213.4(g)(3) does not require the lessor to itemize the components of the periodic payments. Some of the components must be disclosed separately if their disclosure is required by other provisions of the regulation, such as official fees and lessee's insurance.

2. *Periodic payments.* The phrase "number, amount, and due dates or periods of payments" requires the disclosure of all payments made periodically. The disclosed payments must include all amounts, such as maintenance and insurance charges, that are paid periodically. In addition, the lessor must disclose the total of such periodic payments. In an open-end lease, however, the lessor may disclose as the total of periodic payments the sum of the scheduled periodic payments referred to in § 213.2(a)(17). See the commentary to § 213.2(a)(17).

Paragraph 4(g)(4).

1. *Taxes.* Taxes that are included in the value at consummation are not disclosed pursuant to this paragraph. See the commentary to § 213.2(a)(18).

Paragraph 4(g)(5).

1. *Coverage.* Section 213.4(g)(5) requires the disclosure of charges that are anticipated by the parties as incident to the normal operation of the lease agreement. It does not require disclosure of charges that are imposed when the lessee terminates early or fails to abide by the lease agreement, such as charges for:

• Late payment.
• Default.
• Early termination.
• Deferral of payments.
• Extension of the lease.

2. *Form of disclosure.* Although the disclosure of an other charge or the total of all other charges must be clear and conspicuous, the lessor need not use the specific terminology "other charge." Moreover, the regulation does not impose a location requirement for the disclosure of other charges. For example:

• A lessor has a single other charge, which is a disposition fee of $100. The lessor may disclose the disposition fee with related disclosures about early or scheduled termination. It may but need not repeat the charge as a total with the label of "other charge" or show a total of other charges.

3. *Relationship to other provisions.* The other charges mentioned in § 213.4(g)(5) are charges that are not required to be disclosed under another provision of § 213.4(g). For example:

• A delivery charge that is paid after consummation is disclosed as an "other charge." A delivery charge that is paid at consummation, however, is disclosed as part of the total initial charges under § 213.4(g)(2), not as an "other charge."

• Occasionally, the price of a mechanical breakdown protection (MBP) contract is disclosed as an "other charge." More often, the price of MBP is reflected in the periodic payment disclosure under § 213.4(g)(3), in which

case it is not disclosed as an "other charge". In states where MBP is regarded as insurance, however, the cost should be disclosed in accordance with § 213.4(g)(6), not as an "other charge." See the commentary to § 213.4(g)(6).

4. *Lessee liabilties at the end of the lease term.* Liabilities that the lease imposes upon the lessee at the end of the scheduled lease term and that must be disclosed include, but are not limited to, disposition and "pick-up" charges.

Paragraph 4(g)(6).

1. *Lessor's insurance.* Insurance that is purchased by the lessor primarily for its own benefit, and that is absorbed as a business expense and not separately charged to the lessee, need not be disclosed under § 213.4(g)(6) even if it provides an incidental benefit to the lessee.

2. *Mechanical breakdown protection.* Whether mechanical breakdown protection (MBP) purchased in conjunction with a lease should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP as insurance, the lessor need not make § 213.4(g)(6) disclosures. The lessor may, however, disclose the § 213.4(g)(6) information in such cases in accordance with the additional information provision in § 213.4(b).

Paragraph 4(g)(7).

1. *Brief identification.* The statement identifying warranties may be brief. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty.

2. *Warranty disclaimers.* Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with § 213.4(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other applicable law.

Paragraph 4(g)(8).

1. *Standards for wear and use.* The lessor is permitted, but not required, to set standards for wear and use (such as excess mileage). The disclosure may be omitted by lessors that do not set such standards. See the commentary to § 213.4(g)(15).

Paragraph 4(g)(9).

1. *Disclosable security interests.* See § 213.2(a)(15) and accompanying commentary to determine what security interests must be disclosed.

Paragraph 4(g)(10).

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.4(g)(10). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditure of amounts in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under § 213.4(g)(12). The § 213.4(g)(10) and (12) disclosures may be combined. Examples of combined disclosures are provided in the model lease disclosure forms in Appendix C.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional lease charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the lease charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. In either case, if the additional charge accrues at a rate higher than the normal lease charge, the lessor must disclose the amount of or the method of determining the additional charge under § 213.4(g)(10).

4. *Extension charges.* Extension charges that exceed the lease charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.4(g)(10).

5. *Reasonableness of charges.* Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable. Section 183(b) of the act sets forth the standards for determining a reasonable penalty or charge.

Paragraph 4(g)(11).

1. *Mandatory disclosure of no purchase option.* Although generally the lessor need only make the specific required disclosures that apply to a transaction, it must disclose affirmatively that the lessee has no option to purchase the leased property when the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under § 213.4(g)(11) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase option fees.* A purchase option fee must be disclosed under this paragraph unless the lessor discloses the fee under § 213.4(g)(5) as an other charge.

Paragraph 4(g)(12).

1. *Default.* When default is also a condition for early termination of a lease, default charges must be disclosed under this paragraph. See the commentary to § 213.4(g)(10).

2. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized capitalized cost and the realized value at early termination, the amount or the method of determining the amount of the difference must be disclosed under this paragraph.

3. *Reasonableness of charges.* Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable. Section 183(b) of the act sets forth the standards for determining a reasonable penalty or charge.

Paragraph 4(g)(14).

1. *Disclosure inapplicable.* When the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use but *not* for the estimated value of the leased property, the lessor need not disclose the lessee's right to an independent appraisal. For example:

- The automobile lessor may reasonably expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it holds the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the lessor is not required to disclose the lessee's appraisal right.

2. *Lessor's appraisal.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in § 183(c) of the act, and the lessor still must disclose the lessee's independent right to an appraisal under § 213.4(g)(14).

3. *Time restriction on appraisal.* Neither the act nor the regulation

specifies any time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease. The regulation does not define what is a "reasonable time."

Paragraph 4(g)(15).

1. *Coverage.* The disclosure under Paragraph 4(g)(15) limiting the lessee's liability for the value of the leased property does not apply at early termination.

2. *Total lease obligation.* The requirement that the total lease obligation be itemized is satisfied by disclosing the 3 components in the definition of total lease obligation in § 213.2(a)(17) with their corresponding amounts. The lessor may cross-reference the individual components disclosed elsewhere in the lease disclosure statement, as done in Appendix C-1.

3. *Taxes.* Taxes included in the value at consummation are included in the total lease obligation. Taxes not included in the value at consummation may, but need not, be included in the total lease obligation at the lessor's option. See the commentary to § 213.2(a)(18).

4. *Leases with a minimum term.* If a lease has an alternative minimum term, the § 213.2(g)(15) disclosures governing the liability limitation are not applicable for the minimum term. See the commentary to § 213.4(a).

5. *Average payment allocable to a monthly period.* The phrase "average payment allocable to a monthly period" is based on the periodic payment used to compute the total lease obligation. See the commentary to § 213.2(a)(17).

6. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability that is based on the estimated value of the property at the end of the lease term. The lessor also may recover additional charges from the lessee at the end of the lease term. Examples of such additional charges include:

- Disposition charges.
- Excess mileage charges.
- Late payment and default charges.
- Amounts by which the unamortized capitalized cost exceeds the estimated residual value that have accrued in simple interest accounting leases because the lessee has made late payments.

4(h) Renegotiations or extensions.

1. *General coverage.* Section 213.4(h) applies only to existing leases that were covered by the requirements of the regulation or previous Regulation Z. It therefore does not apply to the renegotiation or extension of leases with an initial term of 4 months or less, because such leases are not covered by the definition of consumer lease in § 213.2(a)(6).

2. *Renegotiation defined.* A renegotiation occurs when an existing consumer lease is satisfied and replaced by a new lease undertaken by the same lessee. A renegotiation is a new lease requiring new disclosures. Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

3. *Renegotiation exceptions.* The following events are not renegotiations even if they are accomplished by satisfying and replacing an existing lease:

- A substitution of leased property in a multiple-item lease, provided the average payment is not changed by more than 25 percent.
- A reduction in the lease charge.
- A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed.

4. *Extension defined.* An extension is any continuation of an existing consumer lease beyond the originally scheduled termination date, but only if the continuation is not the result of a renegotiation. The continuation must be agreed to by both the lessor and the lessee. An extension that exceeds 6 months is a new lease requiring new disclosures.

5. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than 6 months, new disclosures are required at the time the extension is agreed to. If the lease is extended on a month-to-month basis and exceeds 6 months, new disclosures are required at the commencement of the seventh month. If a consumer lease is extended for several terms, one of which will exceed 6 months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed 6 months beyond the originally scheduled termination date.

6. *Inapplicable disclosures.* Disclosures that are inapplicable to the terms of a renegotiation or extension need not be given. For example:

- If the term for which extension disclosures are given is 1 month and the lessee will pay no official fees and taxes during that month, no disclosure of those amounts is necessary.
- If a renegotiation involves no initial charges, no disclosure of initial charges is necessary.

7. *Court proceedings.* No disclosures are required if a renegotiation or extension results from an agreement involving a court proceeding.

8. *Deferrals.* No disclosures are required if one or more payments are deferred whether or not a fee is charged.

9. *Assumptions.* No disclosures are required when a consumer lease is assumed by another person, whether or not an assumption fee is charged.

References

Statute: Sections 102(b), 121, 122, 124, 182, and 183.

Other sections: §§ 213.2, 213.5, and 213.7 and Appendix C.

Previous regulation: §§ 226.6 and 226.15.

1981 changes: Although reorganized, the disclosure requirements are substantially the same as the previous requirements. The sole amendment implements § 121 of the Truth in Lending Act pertaining to multiple lessors and lessees.

Section 213.5—Advertising

5(a) General rule.

1. *Persons covered.* All "persons" must comply with the advertising provisions in this section, not just those that meet the definition of lessor in § 213.2(a)(8). Thus, automobile dealers, merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. The owner and personnel of the medium in which an advertisement appears or through which it is disseminated, however, are not subject to civil liability for violations under section 184(b) of the act.

2. *"Usually and customarily."* Section 213.5(a) is not intended to prohibit the advertising of a single item or the promotion of new leasing programs, but to bar the advertising of terms that are not and will not be available. Thus, an advertisment may state terms that will be offered for only a limited period or terms that will become available at a future date.

5(b) Catalogs and multipage advertisements.

1. *General rule.* The multiple-page advertisements to which §213.5(b) refers are advertisements consisting of a numbered series of pages—for example, a supplement to a newspaper. A mailing comprised of several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross-references.* A multiple-page advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule clearly stating sufficient information for the reader to determine the disclosures required under § 213.5(c) (1) through (5). If one of the triggering terms listed in § 213.5(c) appears on another page of the catalog or multiple-page advertisement, that page must clearly refer to the specific page where the table, chart, or schedule begins.

5(c) Terms that require additional information.

1. *Clear and conspicuous standard.* Section 213.5(c) prescribes no specific rules for the format of the necessary disclosures. The terms need not be printed in a certain type size and need not appear in any particular place in the advertisement.

2. *Triggering terms.* Whenever certain triggering terms appear in lease advertisements, the additional terms enumerated in § 213.5(c) (1) through (5) must also appear. An example of one or more typical leases with a statement of all the terms applicable to each may be used. The additional terms must be disclosed even if the triggering term is not stated explicitly, but is readily determinable from the advertisement. For example, if an advertisement states a 5-year lease term with monthly payments, the number of required payments—a triggering term—is readily apparent.

5(d) Multiple-item leases; merchandise tags.

1. *Merchandise tags.* Section 213.5(d) provides a method for using merchandise tags without including all the required disclosures on the tags. As an alternative to this dosclosure method, a merchandise tag may state all the necessary terms on one or both sides of the tag. If the terms are on both sides of the tag, both sides must be accessible to the consumer.

References

Statute: Sections 105(a) and 184.
Other sections: § 213.2(a) (2) and (6).
Previous regulation: § 226.10 (a), (b), (g), and (h).
1981 changes: None.

Section 213.6—Preservation and Inspection of Evidence of Compliance

1. *Preservation methods.* Lessors must retain evidence that they performed required actions as well as made required disclosures. Adequate evidence of compliance does not require actual paper copies of disclosure statements or other business records. The evidence may be retained on microfilm, microfiche, or by any other method designed to reproduce records accurately (including computer programs). The lessor need retain only enough information to reconstruct the required disclosures or other records.

References

Statute: Section 105(a)
Previous regulation: § 226.6(i)
1981 changes: A uniform 2-year record-retention rule replaces the previous requirement that records be retained through at least one compliance examination.

Section 213.7—Inconsistent State Requirements

1. *Procedures.* Only states (through their authorized officials) may request and receive determinations on inconsistency. The procedures for requesting a Board determination on inconsistency are contained in Appendix B.

2. *Inconsistent state disclosures.* A lessor that chooses to make inconsistent state disclosures must do so in the manner prescribed by § 213.4(b).

References

Statute: Sections 111(a)(1) and 186(a).
Other sections: §§ 213.2(a)(16) and 213.4(b) and Appendix B.
Previous regulation: § 226.6(b)(3).
1981 changes: None.

Section 213.8—Exemption of Certain State-Regulated Transactions

1. *Classes eligible.* The state determines the classes of transactions for its exemption and makes its application for those classes. Classes might be, for example, all automobile leases or all leases in which the lessor is a bank.

2. *Substantial similarity.* The "substantially similar" standard requires that state statutory or regulatory provisions and state interpretations of those provisions must be generally the same as the federal act and the regulation. A state will be eligible for an exemption even if its law covers classes of transactions not covered by the federal law. For example, if a state's law covers leases for agricultural purposes, this will not prevent the Board from granting an exemption for consumer leases, even though leases for agricultural purposes are not covered by the federal law.

3. *Adequate enforcement.* The standard requiring adequate provision for enforcement generally means that appropriate state officials are authorized to enforce the state law through procedures and sanctions comparable to those available to federal enforcement agencies.

References

Statute: Sections 111(a)(2) and 186(b).
Other sections: §§ 213.2(a)(16) and 213.4(b) and Appendix A.
Previous regulation: § 226.6(b)(3).
1981 changes: None.

Appendix A—Procedures and Criteria for State Exemptions

References

Statute: Section 186(b).
Other sections: § 213.8.
Previous regulation: § 226.80 (Supplement VI, Section I).
1981 changes: None.

Appendix B—Procedures and Criteria for Board Determination Regarding Preemption

References:

Statute: Section 186(a).
Other sections: § 213.7.
Previous regulation: § 226.80 (Supplement VI, Section II).
1981 changes: None.

Appendix C—Model Forms

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. The changes to the model forms may not be so extensive as to affect the

substance, clarity, or meaningful sequence of the forms. Examples of acceptable changes include:

• Using the first person, instead of the second person, in referring to the lessee.

• Using "lessee," "lessor," or names instead of pronouns.

• Rearranging the sequence of the disclosures.

• Incorporating certain state "plain English" requirements.

• Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "O," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multi-purpose standard forms.)

• Adding language or symbols to indicate estimates.

2. *Model open-end or finance vehicle lease disclosures.* Model C–1 is designed for an open-end or finance lease of a vehicle. An open-end or finance lease is one in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property and its realized value. Section 213.4(g)(15)(i) requires disclosure of an itemized total lease obligation for such leases. To facilitate this disclosure, Model C–1 divides the initial charges (item 3) into two categories: Those that are included in the total lease obligation and those that are not. The amount of the monthly payment (item 4) is similarly divided. This format permits the components of the total lease obligation (item 11) to be disclosed simply by cross-reference to the previous items. See the commentary to § 213.2(a)(17). The inclusion of taxes in the basic monthly payment disclosure (mentioned in the instructions to item 4(a)) is not mandatory in all cases. See the commentary to § 213.4(g)(15).

3. *Model closed-end or net vehicle lease disclosures.* Model C–2 is designed for a closed-end or net lease of a vehicle. A closed-end or net lease is one in which the lessee's liability at the end of the lease term is *not* based on the difference between the estimated value of the leased property and its realized value. Item 13(c) is included for those closed-end vehicle leases in which the lessee's liability at early termination is based on the vehicle's estimated value. See § 213.4(g)(14).

4. *Model furniture lease disclosures.* Model C–3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination that is required under § 213.4(g)(14) because few closed-end furniture leases base the lessee's liability at early termination on the estimated value of the leased property. The disclosure may be added, if it is applicable, without loss of the form's protection from civil liability.

References

Statute: §§ 105, 130, and 185.

Previous regulation: §§ 226.1501, 226.1502, and 226.1503.

1981 changes: References in the instructions to the previous regulations have been deleted.

Appendix D—Federal Enforcement Agencies

References

Statute: § 108.

Previous regulation: Appendix E.

1981 changes: None.

Board of Governors of the Federal Reserve System, May 6, 1982.

William W. Wiles,

Secretary of the Board.

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