FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10451**
April 24, 1991]

REGULATIONS B AND Z

Amendments to the Official Staff Commentaries

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

The Board of Governors of the Federal Reserve has amended its official staff commentary on Regulation B, "Equal Credit Opportunity," and on Regulation Z, "Truth in Lending."

The changes to the staff commentary for Regulation B clarify the Board's position regarding notification of adverse action under certain circumstances, and reflect a determination of preemption of a revision of an Ohio law by Federal law; these changes were effective April 1, 1991.

The amendments to the Regulation Z staff commentary address such issues as renewals of home equity lines of credit, credit card substitution, and renewable balloon payment mortgages. These changes were effective on April 1, 1991, but compliance is optional until October 1, 1991.

Enclosed — for depository institutions in the Second Federal Reserve District and others who maintain sets of regulations of the Board of Governors — are copies of the amendments to the official staff commentaries for Regulations B and Z, which have been reprinted from the *Federal Register*; additional, single copies may be obtained at this Bank (33 Liberty Street) from the Issues Division on the first floor, or by contacting the Circulars Division (Tel. No. 212-720-5215 or 5216). Questions regarding these matters may be directed to our Compliance Examinations Department (Tel. No. 212-720-5914).

E. Gerald Corrigan,
President.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

EQUAL CREDIT OPPORTUNITY

AMENDMENTS TO THE OFFICIAL STAFF COMMENTARY ON REGULATION B

(Effective April 1, 1991)

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; EC-1]

Equal Credit Opportunity; Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final official staff interpretation.

SUMMARY: The Board is publishing in final form revisions to the official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations of the regulation. The revisions address notification of adverse action and a state law preemption determination.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, Adrienne D. Hurt, Senior Attorney, or Jane Ahrens, Staff Attorney, at (202) 452-2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR part 202). The Board also has an official staff commentary (12 CFR part 202 (Supp. I)) that interprets the regulation. The commentary provides general guidance to creditors in applying the regulation to various credit transactions, and is updated periodically to address significant questions that arise.

On November 28, 1990, the Board published for comment a proposed update to the commentary. (55 FR 49391) This notice contains in final form the 1990-91 update to the official staff commentary on Regulation B.

(2) Revisions

Section 202.2 Definitions

2(c) Adverse action

Comment 2(c)(2)(ii)-2 is added to clarify the Board's long-standing position that a notice of adverse action need not be provided in instances where a creditor takes action regarding a current delinquency or default on an account—that is, a delinquency or default that has not been cured by the time a creditor takes action on an account. Notification generally is required, however, for action based on a past delinquency or default that may have previously existed but that no longer continues.

Section 202.11 Relation to State Law

11(a) Inconsistent state laws

Comment 11(a)-2 is added to reflect a preemption determination relating to Ohio law that took effect on July 23, 1990 (55 FR 29566).

List of Subjects in 12 CFR Part 202

Banks; Banking; Civil rights; Consumer protection; Credit; Federal Reserve System; Marital status discrimination; Minority groups; Penalties; Religious discrimination; Sex discrimination; Women.

Pursuant to authority granted in section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b), the Board is amending the official staff commentary to Regulation B (12 CFR Part 202 Supp. I) as follows:

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691-1691f.

For this Commentary to be complete, retain:
1) Commentary pamphlet dated April 1, 1990.
2) This slip sheet.

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(OVER)

2. In § 202.2, comment 2(c)(2)(ii)–2 is added to read as follows:

Section 202.2 Definitions

2(c) Adverse action.

* * * * *

Paragraph 2(c)(2)(ii)

* * * * *

2. Current delinquency or default. The term adverse action does not include a creditor's termination of an account when the accountholder is currently in default or delinquent on that account. Notification in accordance with § 202.9 of the regulation generally is required, however, if the creditor's action is based on a past delinquency or default on the account.

* * * * *

3. In § 202.11, comment 11(a)–2 is added to read as follows:

Section 202.11 Relation to State Law

11(a) Inconsistent state laws.

* * * * *

2. Preemption determination—Ohio. Effective July 23, 1990, the Board has determined that the following provision in the state law of Ohio is preempted by the federal law:

• Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring system; permits without limitation the consideration of age in real estate transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state law.

* * * * *

Board of Governors of the Federal Reserve System, April 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–8406 Filed 4–9–91; 8:45 am]

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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TRUTH IN LENDING

AMENDMENTS TO THE OFFICIAL STAFF COMMENTARY ON REGULATION Z

(Effective April 1, 1991)

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations. The revisions address several issues, including renewals of home equity lines, credit card substitution, and renewable balloon payment mortgages.

DATES: Effective April 1, 1991, but compliance optional until October 1, 1991.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412: Jane Ahrens, Sharon Bowman, Michael Bylsma, Leonard Chanin, Adrienne Hurt, Kurt Schumacher, Mary Jane Seebach, John Wood. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: (1) *General.* The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR part 226). Effective October 13, 1981, an official staff commentary (TIL–1, Supp. I to 12 CFR part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise. This update reflects material that was published for comment at 55 FR 49392 (November 28, 1990). Creditors are free to rely on the revised commentary as of April 1, 1991, although they need not follow the revisions until October 1, 1991. (2) *Revisions.* The following is a description of the revisions to the commentary:

Subpart A—General

Section 226.4 Finance Charge

4(a) Definition

In the proposal, comment 4(a)–2 would have been revised to say that a tax imposed on a creditor by a state is a finance charge if the creditor separately imposes the charge on the consumer in connection with a credit transaction (instead of absorbing the charge as a cost of doing business), even if the creditor is authorized by the state to pass the charge on to the consumer. A number of commenters opposed the proposed revision. Some commenters felt that the relationship between the proposed new language in comment 4(a)–2 and other comments dealing with the treatment of taxes was not clear. Others believed that the proposal characterized taxes as finance charges in inappropriate situations.

In response to comments, the position taken in the proposal has been changed; it is set forth as new comment 4(a)–6. New language in comment 4(a)–2 deals only with one situation in which a tax is not a finance charge, where the creditor absorbs the tax as a cost of doing business.

New comment 4(a)–6 differs from the proposal in several ways. First, the position taken in the proposal that a tax imposed solely on the creditor is a finance charge even if the state permits the creditor to pass the tax onto the consumer is changed. If applicable law is silent as to the permissibility of passing the tax on, the tax is a finance charge. If, however, applicable law directs or authorizes the pass-on, the tax is not a finance charge.

The new comment also clarifies that a tax does not constitute a finance charge in several other situations. For example, if the law imposes a tax on the parties jointly or on the credit transaction without indicating whether the creditor or the consumer is to pay the tax, the tax is not a finance charge. (This clarification harmonizes the new comment with comment 4(a)–3, addressing concerns expressed by some commenters.) Finally, the comment clarifies that if a tax is excluded from the finance charge by some other provision of Regulation Z or the commentary (for example, traditional sales taxes or mortgage recording taxes) the tax does not become a finance charge by virtue of this new comment.

Subpart B—Open-End Credit

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(2) Fees for Issuance or Availability

Proposed comments 5a(b)(2)–1 and 5a(b)(2)–2 provided that certain membership fees and fees for enhancements should not be presented in the tabular format. Comment 5a(b)(2)–1 distinguishes between membership fees that result in the automatic issuance of card accounts as a benefit of membership, (which must be disclosed) and fees that merely result in eligibility for a card (which may but need not be disclosed). Commenters stated that

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when it is difficult to determine the nature of the membership fee, an issuer ensures compliance by being able to include the fee in the tabular format. Therefore, the proposed revision to comment 5a(b)(2)–1 is withdrawn. Because enhancement fees are not imposed for the issuance or availability of a card, comment 5a(b)(2)–2 is revised as proposed.

5a(c) Direct-mail Applications and Solicitations

Comment 5a(c)–1 is revised to correct a drafting error. Under § 226.5a(b)(1)(ii), for direct-mail applications and solicitations, an accurate variable annual percentage rate is one in effect within 60 days before mailing.

Comment 5a(c)–2 is revised to clarify the dual use of a single application form in direct mailings and public locations as "take-ones." The comment provides that if the issuer adheres to requirements relating to the accuracy of the credit terms in each case, creditors have the flexibility of including or omitting the disclosures referred to in § 226.5a(e)(1) (ii) and (iii) (the printing date, the statement that the credit terms are accurate as of that date and subject to change thereafter, the statement that the consumer should contact the issuer for updated information, and a toll-free telephone number or a mailing address).

5a(e) Applications and Solicitations Made Available to General Public

5a(e)(1) Disclosure of Required Credit Information

Comment 5a(e)(1)–2 is revised to make a technical correction. The comment clarifies that disclosures specified in § 226.5a(e)(1) (ii) and (iii) may appear either in or outside the table containing the credit term disclosures.

Section 226.5b Requirements for Home Equity Plans

Existing comments 5b–2 through 5b–5 are redesignated as comments 5b–3 through 5b–6, respectively. New comment 5b–2 is added to provide guidance on when changes to a home equity plan are governed by the change in terms rules in § 226.9(c), and when changes constitute a new plan requiring completely new disclosures. The comment has been changed from the proposal to clarify that § 226.9(c) applies when a plan is changed prior to or at maturity.

5b(d) Content of Disclosures

5b(d)(4) Possible Actions by Creditor

Paragraph 5b(d)(4)(iii)

A technical change is made to comment 5b(d)(4)(iii)–1 to provide guidance concerning the ability of a creditor to retain the right to freeze a line of credit if the maximum annual percentage rate is reached.

5b(d)(5) Payment Terms

Paragraph 5b(d)(5)(iii)

Comment 5b(d)(5)(iii)–4 is revised to clarify the disclosures required for reverse mortgages with shared appreciation features. While the proposal gave general guidance regarding reverse mortgages, the final comment provides greater specificity about the information that should be provided.

5b(d)(8) Fees Imposed by Third Parties to Open a Plan

Comment 5b(d)(8)–2 is revised to clarify that creditors need not include costs for property insurance in the total of third party fees if the creditor discloses that such insurance is required. The proposed amendment to require creditors to include another disclosure about property insurance in any itemization of third party fees provided in response to a consumer's request has not been adopted. Requiring creditors to repeat this information is unnecessary since consumers already will receive information under this section if property insurance is required.

5b(f) Limitations on Home Equity Plans

Paragraphs 5b(f)(3) (i) and (vi)

Comments 5b(f)(3)(i)–1 and 5b(f)(3)(vi)–1 are revised to provide additional guidance when a creditor provides in its initial agreement that further advances will be prohibited or the credit limit reduced when the maximum annual percentage rate is reached.

Section 226.6 Initial Disclosure Statement

6(e) Home Equity Plan Information

Comment 6(e)–4 is revised to clarify that when disclosures are the same for the draw and repayment phase, creditors need not explicitly state that the information applies to both phases, as long as this fact is clear.

Section 226.9 Subsequent Disclosure Requirements

9(c) Change in Terms

9(c)(1) Written Notice Required

Section 226.9(c)(1) requires creditors to provide a notice whenever any term required to be disclosed under § 226.6 is changed. Section 226.6(e)(7) requires creditors to give certain variable-rate and payment examples for home equity plans, unless the disclosures provided with the application were in a form the consumer could keep and included representative payment examples covering the payment option chosen by the consumer.

Comment 9(c)(1)–6 is revised to clarify that if the index is changed, the maximum annual percentage rate is increased, or a variable-rate feature is added to a fixed-rate plan, the creditor must give the maximum rate information required by § 226.5b(d)(12)(x) and the historical example required by § 226.5b(d)(12)(xi), unless these disclosures are unchanged from those given earlier. A parenthetical reference to § 226.30 is included to alert creditors to the fact that comment 30–11 limits a creditor's ability to increase the maximum rate on a home equity plan when renewing the plan. (Section 226.30 provides that the cap may be increased only when a plan is renewed at maturity—or before maturity, provided the new cap is effective only after the original maturity of the plan.) The comment also clarifies that if the minimum payment requirement is changed, the creditor must give the payment disclosures required by § 226.5b(d)(5)(iii) (and, in variable-rate plans, the disclosures required by § 226.5b (d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. This comment only addresses changes specifically agreed to by the consumer. Therefore, as provided under § 226.5b(f)(3)(iv) (discussing beneficial changes), the requirements of the comment do not apply if a creditor offers the consumer the option of making lower payments.

Section 226.12 Special Credit Card Provisions

12(a) Issuance of Credit Cards

Card issuers are generally prohibited from issuing credit cards on an unsolicited basis but may do so as a renewal of, or substitute for, an accepted credit card. Comment 12(a)(2)–2 provides that card issuers may substitute one credit card for another even where the underlying credit card account relationship has changed in some way, including situations where credit features will be added or changed. This comment is revised to explain that a particular type of situation—that is, substituting a credit card on an existing account and at the same time adding another credit card account (such that the consumer is able to obtain future extensions of credit on

both the original and the new account)—is not considered a permissible substitution for purposes of § 226.12(a). (There is, of course, no prohibition against doing this on a solicited basis.) An example is provided in the comment to illustrate the point. The language of the amendment differs from that of the proposal in order to allay a misunderstanding of some commenters. The interpretation does not preclude the unsolicited substitution of a card in connection with the conversion of a retail credit card program into a co-branded retail/bank card, nor does it preclude the unsolicited substitution of a card in connection with the transfer of future receivables to a successor card issuer as set forth in comment 12(a)(2)–3; in both of these cases only one account will be accessible for future extensions of credit.

Section 226.16 Advertising

16(d) Additional Requirements for Home Equity Plans

Comment 16(d)–4 is revised to clarify that a creditor may state, for example, "no closing costs" in cases where property insurance may be required as long as the creditor includes a disclosure that such insurance may be required.

Subpart C—Closed-End Credit

Section 226.17 General Disclosure Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1)

Comment 17(a)(1)–5 is revised to indicate that a creditor may disclose in the segregated disclosures ("federal box") whether or not a secured credit transaction is assumable (even if the transaction is not a residential mortgage transaction).

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1)

Comment 17(c)(1)–1 is revised to address questions raised by the addition of new comment 20(c)–3, which is added to reiterate that the general principle of § 226.17(c)(1), that disclosures reflect the terms of the legal obligation between the parties, also applies to the disclosures required under § 226.20(c) for certain variable-rate transactions. A few comments expressed concern that the existing language in comment 17(c)(1)–1, that disclosures should reflect the legal obligation "at the outset of the transactions," would not permit the disclosures under § 226.20(c) to accurately reflect subsequent modifications or amendments to the legal obligation. The revised comment, therefore, clarifies that the disclosures required under § 226.20(c) must be based on the legal obligation at the time disclosures are provided and "as of" the outset of the transaction in all other cases. This latter revision reflects the fact that early disclosures provided under subpart C are based on what the legal obligation is expected to be at consummation. A technical change also has been made to the first sentence of the comment (changing "should" to "shall") to provide for consistency with the language used in the regulation.

Comment 17(c)(1)–11 is revised to provide guidance on when a renewable loan with a balloon payment (formerly referred to as a "renegotiable-rate mortgage") should be disclosed as a long-term variable-rate loan as opposed to a short-term balloon loan. The comment provides that disclosures must be based on the payment amortization (or the specified term of the obligation with renewals) when the creditor is either unconditionally obligated to renew the loan or obligated to renew subject only to conditions within the consumer's control. The comment provides examples of both conditions considered to be within the consumer's control and those outside the consumer's control. As a variety of these products is available on the market, no one product has been singled out as illustrative in the comment. The reference contained in the proposed comment to a creditor's obtaining a credit report is not included in the revised comment since it does not exemplify a condition on the obligation to renew a loan. The revised comment also provides that disclosures for a renewable balloon-payment instrument that will be renewed by a "refinancing" of the obligation (as that term is defined by § 226.20(a)) must be based on the term of the balloon-payment loan. In addition, the comment states that its provisions do not apply to construction loans subject to § 226.17(c)(6). Finally, the heading for comment 17(c)(1)–11 is revised to parallel that of comment 19(b)–5. The comment now being revised was originally published to address disclosure of a specific renegotiable-rate mortgage product which is no longer widely available. While the revisions have broadened the scope of the comment, renegotiable-rate mortgages are still included within the comment's coverage.

Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions

Comment 19(b)–3 provides factors to determine whether or not a transaction involves an "intermediary agent or broker," which affects the timing rules for certain disclosures. The factors look to whether there is a relationship between the creditor and the broker in which the creditor has knowledge of and exercises control over the broker's actions. The third factor describing the amount of work completed by the broker is revised to recognize that a large amount of work performed by a broker may not necessarily evidence this sort of relationship. For example, for purposes of this factor, a broker's submission of a completed loan package to a creditor may not indicate a close relationship between the two if such a practice is customary in a particular area.

Comment 19(b)–5 is revised to parallel the revisions to comment 17(c)(1)–11 describing renewable balloon-payment mortgage instruments.

Section 226.20 Subsequent Disclosure Requirements

20(a) Refinancings

Comment 20(a)–3 is revised to reflect the name change for describing a renewable balloon-payment mortgage (formerly referred to as a "renegotiable-rate mortgage") in comments 17(c)(1)–11 and 19(b)–5.

20(c) Variable-Rate Adjustments

Comment 20(c)–3 is added to reiterate that the general requirement of § 226.17(c)(1), that disclosures reflect the terms of the legal obligation between the parties, applies to the disclosures required under § 226.20(c) for certain variable-rate transactions. This clarification arises from concerns raised recently that some creditors may not be adjusting their variable-rate loans consistent with the terms of the underlying legal obligation, resulting in inaccurate interest rate and payment adjustments. Under § 226.20(c), disclosures about the new interest rate and payment must be based on the index type and index value specified in the legal obligation.

Subpart D—Miscellaneous

Section 226.28 Effect on State Laws

28(a) Inconsistent Disclosure Requirements

Comment 28(a)–15 is added to reflect the Board's recent determination of the effect of the Truth in Lending Act and Regulation Z on certain provisions of the law of Wisconsin dealing with disclosures for home equity plans and the right of a creditor to accelerate the outstanding balance when a nonapplicant spouse terminates a plan. The notice of this determination was published at 55 FR 31815 (August 6, 1990).

Section 226.30 Limitation on Rates

Comment 30–1 is revised to reflect the name change for describing a renewable balloon-payment mortgage (formerly referred to as a "renegotiable-rate mortgage") in comments 17(c)(1)–11 and 19(b)–5.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in lending.

(3) *Text of revisions.* Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board amends part 226 as follows:

PART 226—TRUTH IN LENDING

1. The authority citation for part 226 is revised to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and 1637(c)(5); sec. 1204(c), Competitive Equality Banking Act, 12 U.S.C. 3806.

2. Supplement I to part 226 is amended as follows:

Subpart A—General

Section 226.4 Finance Charge

a. Comments to 4(a) are amended by adding a second bulleted paragraph after the first bulleted paragraph in comment 4(a)–2, and by adding new comment 4(a)–6 to read as follows:

4(a) Definition

* * * * *

2. *Costs of doing business.* * * *

• A tax imposed by a state or other governmental body on a creditor is not a finance charge if the creditor absorbs the tax as a cost of doing business and does not separately impose the tax on the consumer. (For additional discussion of the treatment of taxes, see other commentary to § 226.4(a).)

* * * * *

6. *Taxes.* A tax imposed by a state or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer. In contrast, a tax is not a finance charge (even if it is collected by the creditor) if applicable law imposes the tax:

• Solely on the consumer;

• On the creditor and the consumer jointly; or

• On the credit transaction, without indicating which party is liable for the tax.

A tax also is not a finance charge if applicable law imposes the tax solely on the creditor, but directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to such a pass-on, the law does not authorize the pass-on.) In addition, a tax is not a finance charge under this comment if it is excluded from the finance charge by any other provision of the regulation or commentary (for example, if it is imposed equally in cash and credit transactions.

Subpart B—Open-End Credit

Section 226.5a Credit and Charge Card Applications and Solicitations

b. Comment 5a(b)(2)–2 is revised to read as follows:

5a(b) Required Disclosures

* * * * *

5a(b)(2) Fees for issuance or availability

* * * * *

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services should not be disclosed in the table if the basic account may be opened without paying such fees.

* * * * *

c. Comments to 5a(c) are amended by revising the second sentence in comment 5a(c)–1, and by revising the third sentence and adding a sentence and parenthetical text after the third sentence in comment 5a(c)–2 to read as follows:

5a(c) Direct-Mail Applications and Solicitations

1. *Accuracy.* * * * (An accurate variable annual percentage rate is one in effect within 60 days before mailing.)

2. *Mailed publications.* * * * In addition, a card issuer may use a single application form as a "take-one" (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of § 226.5a(c) even when the form is used as a "take-one"—that is, by presenting the required § 226.5a disclosures in a tabular format. When used in a direct mailing, the credit term disclosures must be accurate as of the mailing date whether or not the §§ 226.5a(e)(1) (ii) and (iii) disclosures are included; when used in a take-one, the disclosures must be accurate for as long as the take-one forms remain available to the public if the §§ 226.5a(e)(1) (ii) and (iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date.)

* * * * *

d. Comment 5a(e)(1)–2 is revised to read as follows:

5a(e) Applications and Solicitations Made Available to General Public

* * * * *

5a(e)(1) Disclosure of Required Credit Information

* * * * *

2. *Form of disclosures.* The disclosures specified in §§ 226.5a(e)(1) (ii) and (iii) may appear either in or outside the table containing the required credit disclosures.

Section 226.5b Requirements for Home Equity Plans

e. Comments 5b–2 through 5b–5 are redesignated as comments 5b–3 through 5b–6, respectively, and new comment 5b–2 is added to read as follows:

2. *Changes to home equity plans entered into on or after November 7, 1989.* Section 226.9(c) applies if, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on different terms. A new plan results, however, if the plan is renewed (with or without changes to the terms) after the scheduled expiration. The new plan is subject to all open-end credit rules, including §§ 226.5b, 226.6, and 226.15.

* * * * *

f. Comment 5b(d)(4)(iii)–1 is amended by revising the fourth sentence to read as follows:

5b(d) Content of disclosures

* * * * *

5b(d)(4) Possible Actions by Creditor

* * * * *

Paragraph 5b(d)(4)(iii)

1. *Disclosure of conditions.* * * * As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in §§ 226.5b(f)(2), 226.5b(f)(3)(i) (regarding freezing the line when the maximum annual percentage rate is reached), and 226.5b(f)(3)(vi) or language that is substantially similar. * * *

* * * * *

g. Comment 5b(d)(5)(iii)–4 is amended by revising the fourth bulleted paragraph to read as follows:

5b(d)(5) Payment Terms

* * * * *

Paragraph 5b(d)(5)(iii)

* * * * *

4. *Reverse mortgages.* * * *

• Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The creditor must disclose the appreciation feature, including describing how the creditor's share will be determined, any limitations, and when the feature may be exercised.

* * * * *

h. Comment 5b(d)(8)–2 is amended by revising the first sentence and by adding a new sentence after the fourth sentence to read as follows:

5b(d)(8) Fees Imposed by Third Parties to Open a Plan

* * * * *

2. *Itemization of third-party fees.* In all cases creditors must state the total of third-party fees as a single dollar amount or a range except that the total need not include costs for property insurance if the creditor discloses that such insurance is required. * * * Any itemization provided upon the consumer's request need not include a disclosure about property insurance.

* * * * *

i. Comment 5b(f)(3)(i)–1 is amended by revising the first sentence and by adding a new sentence after the first sentence to read as follows:

5b(f) Limitations on Home Equity Plans

* * * * *

Paragraph 5b(f)(3)(i)

1. *Changes provided for in agreement.* A creditor may provide in the initial agreement that further advances will be prohibited or the credit line reduced during any period in which the maximum annual percentage rate is reached. A creditor also may provide for other specific changes to take place upon the occurrence of specific events. * * *

* * * * *

j. Comment 5b(f)(3)(vi)–1 is amended by revising the first sentence and by adding a new sentence after the first sentence to read as follows:

Paragraph 5b(f)(3)(vi)

1. *Suspension of credit privileges or reduction of credit limit.* A creditor may prohibit additional extensions of credit or reduce the credit limit in the circumstances specified in this section of the regulation. In addition, as discussed under § 226.5b(f)(3)(i), a creditor may contractually reserve the right to take such actions when the maximum annual percentage rate is reached. * * *

* * * * *

Section 226.6 Initial Disclosure Statement

k. Comment 6(e)–4 is amended by revising the first sentence read as follows:

6(e) Home Equity Plan Information

* * * * *

4. *Disclosures for the repayment period.* * * * To the extent the corresponding annual percentage rate, the information in footnote 12, and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.

* * * * *

Section 226.9 Subsequent Disclosure Requirements

l. Comment 9(c)(1)–6 is revised to read as follows:

9(c) Change in Terms

9(c)(1) Written Notice Required

* * * * *

6. *Changes to home equity plans entered into on or after November 7, 1989.* Section 226.9(c) applies when, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of home equity plan—entered into on or before November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:

- If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by § 226.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by § 226.5b (d)(12)(x) and (d)(12)(xi), unless these disclosures are unchanged from those given earlier.
- If the minimum payment required is changed, the creditor must include the disclosures required by § 226.5(d)(5)(iii) (and, in variable-rate plans, the disclosures required by section 226.5b (d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimim payment requirement. (See the commentary to § 2265b (d)(5)(iii), (d)(12)(xi) for a discussion of representative examples.)

When the terms are changed pursuant to a written agreement as described in § 2265b(f)(3)(iii), the advance-notice requirement does not apply.

Section 226.12 Special Credit Card Provisions

m. Comment 12(a)(2)–2 is amended by revising the third bulleted paragraph to read as follows:

12(a) Issuance of Credit Cards

* * * * *

Paragraph 12(a)(2)

* * * * *

2. *Substitution—examples.* * * *

- Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addiiton, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.) The "substitution" of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.

Section 226.16 Advertising

n. Comment 16(d)–4 is amended by adding two sentences after the second sentence to read as follows:

16(d) Additional Requirements for Home Equity Plans

* * * * *

4. *Misleading terms prohibited.* * * * In the case of property insurance, however, a creditor may state, for example, "no closing costs" even if property insurance may be required, as long as the creditor also provides a statement that such insurance may be required. (See the commentary to this section regarding fees to open a plan.)

* * * * *

Subpart C—Closed-End Credit

Section 226.17 General Disclosure Requirements

o. Comment 17(a)(1)–5 is revised by adding a bulleted paragraph after the thirteenth bulleted paragraph to read as follows:

17(a) Form of Disclosures

Paragraph 17(a)(1)

* * * * *

5. *Directly related.* * * *

- A statement whether or not a subsequent purchaser of the property securing an obligation may be permitted to assume the remaining obligation on its original terms.

* * * * *

p. Comment 17(c)(1)–1 is amended by revising the first sentence and adding a sentence after the first sentence to read as follows:

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1)

1. *Legal obligation.* The disclosures shall reflect the credit terms to which the parties are legally bound as of the outset of the transaction. In the case of disclosures required under section 226.20(c), the disclosures shall reflect the credit terms to which the parties are legally bound when the disclosures are provided. * * *

* * * * *

q. Comment 17(c)(1)–11 is amended by revising the heading, the first sentence and the first bulleted paragraph to read as follows:

11. *Examples of variable-rate transaction.* Variable-rate transactions include:

- Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. Disclosures must be based on the payment amortization (unless the specified term of the obligation with renewals is shorter) and on the rate in effect at the time of consummation of the transaction. (Examples of conditions within a consumer's

control include requirements that a consumer be current in payments or continue to reside in the mortgaged property. In contrast, setting a limit on the rate at which the creditor would be obligated to renew or reserving the right to change the credit standards at the time of renewal are examples of conditions outside a consumer's control.) If, however, a creditor is not obligated to renew as described above, disclosures must be based on the term of the balloon-payment loan. Disclosures also must be based on the term of the balloon-payment loan in balloon-payment instruments in which the legal obligation provides that the loan will be renewed by a "refinancing" of the obligation, as that term is defined by § 226.20(a). If it cannot be determined from the legal obligation that the loan will be renewed by a "refinancing," disclosures must be based either on the term of the balloon-payment loan or on the payment amortization, depending on whether the creditor is unconditionally obligated to renew the loan as described above. (This discussion does not apply to construction loans subject to § 226.17(c)(6).) * * *

* * * * *

Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions

r. Comment 19(b)–3 is amended by revising the third bulleted paragraph and the last paragraph to read as follows:

19(b) Certain Variable-Rate Transactions

* * * * *

3. *Intermediary agent or broker.* * * *

• The amount of work (such as document preparation) the creditor expects to be done by the broker on an application based on the creditor's prior dealings with the broker and on the creditor's requirements for accepting applications, taking into consideration the customary practice of brokers in a particular area. The more work that the creditor expects the broker to do on an application, in excess of what is usually expected of a broker in that area, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor.

An example of an "intermediary agent or broker" is a broker who, customarily within a brief period of time after receiving an application, inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them. The broker is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, it might request a credit report and an appraisal (or even prepare an entire loan package if customary in that particular area).

* * * * *

s. Comment 19(b)–5 is amended by revising the first bulleted paragraph to read as follows:

5. *Example of variable-rate transactions.*

* * *

• Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. (See comment 17(c)(1)–11 for a discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.) * * *

* * * * *

t. At the end of the comments to § 226.19, under the heading "References," at the end of the paragraph designated "1981 changes," the phrase "ection 226.20—Subsequent Disclosure Requirements" is removed, and a new heading "*Section 226.20 Subsequent Disclosure Requirements*" is added, directly below that paragraph.

Section 226.20 Subsequent Disclosure Requirements

u. Comment 20(a)–3 is amended by revising the second sentence to read as follows:

20(a) Refinancings

* * * * *

3. *Variable-rate.* * * * For example, a renewable balloon-payment mortgage that was disclosed as a variable-rate transaction is not subject to new disclosure requirements when the variable-rate feature is invoked.

* * *

* * * * *

20(c) Variable-Rate Adjustments

* * * * *

v. Comment 20(c)–3 is added to read as follows:

3. *Basis of disclosures.* The disclosures required under this section shall reflect the terms of the parties legal obligation, as required under § 226.17(c)(1).

Subpart D—Miscellaneous

Section 226.28 Effect on State Laws

w. Comment 28(a)–15 is added to read as follows:

28(a) Inconsistent Disclosure Requirements

* * * * *

15. *Preemption determination—Wisconsin.* Effective October 1, 1991, the Board has determined that the following provisions in the state law of Wisconsin are preempted by the federal law:

• Section 422.308(1)—the disclosure of the annual percentage rate in cases where the amount of the annual percentage rate disclosed to consumers under the state law differs from the amount that would be disclosed under federal law, since in those cases the state law requires the use of the same term as the federal law to represent a different amount then the federal law.

• Section 766.565(5)—the provision permitting a creditor to include in an open-end home equity agreement authorization to declare the account balance due and payable upon receiving notice of termination from a non-obligor spouse, since such provision is inconsistent with the purpose of the federal law.

* * * * *

Section 226.30 Limitation on Rates

x. Comment 30–1 is amended by revising the parenthetical text at the end of the fourth bulleted paragraph to read as follows:

1. *Scope of coverage.* * * * (Contrast with the renewable balloon-payment mortgage instrument described in comment 17(c)(1)–11.)

Board of Governors of the Federal Reserve System, March 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

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