For Further Information Contact:
The District Office in which you are located, or the Compliance Programs Division, Office of Thrift Supervision, Washington, D.C.

Thrift Bulletin 21-1

The revisions to the official staff commentary for Regulation B interpret provisions of the regulation which implement the amendments to the Equal Credit Opportunity Act contained in the Women's Business Ownership Act of 1988 (P.L. 100-533). Other revisions to the Regulation B commentary address questions regarding data collection, including one related to amendments to the Home Mortgage Disclosure Act and Regulation C. These revisions became effective on April 1, 1990.

This eighth update to the Regulation E commentary addresses questions that have arisen about the requirements of the regulation relating to the revocation of authority for pre-authorized transfers. This revision became effective on April 1, 1990.

The majority of the revisions to the Truth in Lending commentary address the amendments to Regulation Z issued in April 1989 to implement the Fair Credit and Charge Card Disclosure Act of 1988 (P.L. 100-583) and the amendments issued in June 1989 to implement the Home Equity Loan Consumer Protection Act of 1988 (P.L. 100-709). The commentary incorporates much of the guidance provided when those regulatory changes were adopted and addresses additional questions that have been raised about application of the new requirements. In addition, other revisions include a discussion of tax refund anticipation loans; a possible new mortgage product, the price-level adjusted mortgage; and open-end credit advertising. These revisions became effective on April 1, 1990, but compliance is optional until October 1, 1990.

Attached is the Federal Register material containing the FRB's commentary updates for all three regulations.

Attachments
This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are key to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM
12 CFR Part 202

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 include interpretations of the final rule amending Regulation B to implement Equal Credit Opportunity Act amendments on business credit as well as interpretations about data collection.

EFFECTIVE DATE: April 1, 1990.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, Adrienne D. Hurt, Senior Attorney, or Jane Alhrens, Staff Attorney, at (202) 452-2412; or Christine B. Hoover, Senior Attorney, or Jane Ahrens, Staff Attorney, at (202) 452-3544. Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTAL 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 has published an official staff commentary (12 CFR part 202 (Supp. I)) to interpret the regulation. The commentary provides guidance to creditors in applying the regulation to specific transactions, and is updated periodically to address significant questions that arise. This notice contains the fourth update.

(2) Revisions

Most of the revisions to the commentary interpret provisions of Regulations B implementing amendments to the ECOA contained in the Women's Business Ownership Act of 1988, Public Law No. 100-533, 102 Stat. 2689. (The regulatory amendments, effective April 1, 1990, were published on December 7, 1989 at 54 FR 50482.)

The other revisions to the commentary address questions that have arisen about data collection, including one related to amendments to the Home Mortgage Disclosure Act and Regulation C. These amendments were adopted to ensure that married women are not left without credit histories if they become divorced or widowed. In the past, credit histories on sole proprietors or any other business typically reported only in the husband's name. The section applies only to consumer credit. (The rule in this section was adopted to ensure that married women are not left without credit histories if they become divorced or widowed. In the past, credit histories on joint accounts held by spouses were typically reported only in the husband's name.) The section does not apply to sole proprietors or any other business credit applicants.

Section 202.9—Notifications

9(a) Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons

Paragraph 9(a)(3) 202.9(a)(3), added by the December 1989 amendments to the regulation, contains the rules for providing notifications on business credit applications. Paragraph 9(a)(3)-1 through 9(a)(3)-5 give creditors guidance in complying with this paragraph.

Section 202.10—Furnishing of Credit Information

Comment 10-1 is revised to clarify that the section applies only to consumer credit. (The rule in this section was adopted to ensure that married women are not left without credit histories if they become divorced or widowed. In the past, credit histories on joint accounts held by spouses were typically reported only in the husband's name.) The section does not apply to sole proprietors or any other business credit applicants.

Section 202.11—Information for Monitoring Purposes

13(a) Information To Be Requested

A cross reference to the commentary to §202.11(a)(2) is added as comment 13(a)-7.
List of Subjects in 12 CFR Part 202


(3) Text of Revisions

Pursuant to authority granted in section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b), the Board amends 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:


2. In §202.1, comment 1(a)-3 is added in reads as follows:

§202.1 Authority, scope, and purpose.

1(a) Authority and scope.

3. Board. The term "Board," as used in this regulation, means the Board of Governors of the Federal Reserve System.

4. In §202.2, comment 2(g)-1 and a heading are added to read as follows:

§202.2 Definitions.

2(g) Business credit.

Definition. The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

4. In §202.3, comment 3(e)-1 and the heading and comment 3(d)(3)-1 are removed; comment 3(d)-1 and the heading are revised to read as follows:

§202.3 Limited exceptions for certain classes of transactions.

3(d) Government credit.

1. Credit to governments. The exception relates to credit extended to (not by) governmental entities. For example, credit extended to a local government by a creditor in the private sector is covered by this exception, but credit extended to consumers by a federal or state housing agency does not qualify for special treatment under this category.

5. In §202.5, comments 5(b)(1)(i) and 5(b)(2)-2 and a heading are added to read as follows:

§202.5 Rules concerning taking of applications.

5(b) General rules concerning requests for information.

Paragraph 5(b)(2)

1. Local laws. Information that a creditor is allowed to collect pursuant to a "state" statute or regulation includes information required by a local statute, regulation, or ordinance.

2. Information required by Regulation 0. Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race or national origin and sex of applicants for home improvement loans and home purchase loans, including some types of loans not covered by §202.13. Certain creditors with assets under $30 million, though covered by HMDA, are not required to collect and report these data, but they may do so at their option under HMDA, without violating the ECOA or Regulation B.

3. In §202.9, comments 9(a)(3)-1 through 9(a)(3)-5 and a heading are added to read as follows:

§202.9 Notification.

9(a) Notification of action taken. ECOA notice, and statement of specific reasons.

Paragraph 9(a)(3)

1. Coverage. In determining the rules in this paragraph that apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in §202.9(a)(3)(i).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules in the paragraph govern the application. However, if an applicant applies for business purpose credit as an individual, the rules in paragraph 9(a)(3)(i) apply unless the application is for trade or similar credit.

2. Trade credit. The term "trade credit" generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier—who finances the sale of equipment, supplies, or inventory; or it does not apply to an extension of credit by a bank or other financial institution for the financing of such items.

3. Factoring. Factoring refers to a purchase of accounts receivable, and thus is not subject to the act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in §202.9(a)(3)(ii) apply as do other relevant sections of the act and regulation.

4. Manner of compliance. In complying with the notice provisions of the act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice and keeping records in accordance with §202.9(a)(3)(i).

5. Timing of notification. A creditor subject to §202.9(a)(3)(ii)A is required to notify a business credit applicant orally or in writing of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of §202.3(a)(1) is deemed reasonable in all instances.

6. In §202.10, comment 10-1 is revised to read as follows:

§202.10 Furnishing of credit information.

1. Scope. The requirements of §202.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.

7. In §202.13, comment 13(a)-7 is added to read as follows:

§202.13 Information for monitoring purposes.

13(a) Information to be requested.

7. Data collection under Regulation C. See comment k(b)(2)-2.


William W. White, Secretary of the Board.

[FEDERAL REGISTRATION NOTIFICATION 67 FR 22630, APRIL 11, 2002]

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; EFT-2]

Electronic Fund Transfers; Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation.

SUMMARY: The Board is publishing in final form changes to the official staff commentary to Regulation E (Electronic Fund Transfers). The commentary applies and interprets the requirements of Regulation E and is a substitute for individual staff interpretations of the regulation. The revision addresses questions that have arisen about the requirements of the regulation relating to the revocation of authority for preauthorized transfers.

EFFECTIVE DATE: April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Contact Mary Jane Seebach or Kurt Schumacher, Staff Attorneys, Division of Consumer Affairs, at (202) 452-3667 or (202) 452-2412. For the hearing-impaired

SUPPLEMENTARY INFORMATION: (1) General. The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR part 205).

The Board has published an official staff commentary (Supp. II to 12 CFR part 205) to interpret the regulation. The commentary is designed to provide guidance to financial institutions and others in applying the regulation to specific situations. The commentary is updated periodically to address significant questions that arise. This notice contains the eighth update, which was proposed for comment on November 15, 1989. The revisions are effective April 1, 1990. (2) Description of revisions. Following is a brief description of the revision to the commentary.

Section 205.10—Preauthorized Transfers Question 10-19.5 Question 10-19.5 addresses the situation where a consumer revokes authorization for preauthorized debits initiated by a designated payee-originator. The question clarifies that when an account-holding financial institution is instructed by the consumer that an earlier authorization is not longer valid, it must block future payments to the payee-originator in keeping with the consumer's instructions.

The title has been revised to make clear that this pertains only to the revocation of authorization for all subsequent debits by a given payee-originator, and not to a consumer's order to stop payment of a particular debit, which is described in Question 10-19. List of Subjects in 12 CFR Part 205 Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

(3) Text of revisions. Pursuant to authority granted in section 904 of the Electronic Fund Transfers Act, 15 U.S.C. 1601b, the Board amends the official staff commentary to Regulation E (12 CFR part 205, Supp. II) as follows:

1. The authority citation for part 205 continues to read:


2. Comment 10-19.5 Q is added to read as follows:

10-19.5 Q: Preauthorized Debits-Revocation of Authorization. A consumer authorizes a designated payee to originate electronic fund transfers from the consumer's account. The consumer later revokes that authorization, and instructs the account-holding financial institution to block all subsequent debits initiated by that payee-originator. Must the financial institution comply with the consumer's instructions, or may it wait for the originator to cease the initiation of automatic debits? A: Since the financial institution has been notified that the consumer's authorization is not longer valid, the institution must block all future debits initiated by that payee-originator. The financial institution may confirm that the consumer has informed the payee-originator of the revocation. The institution may also require a copy of the consumer's revocation.


William W. Wiles, Secretary of the Board.

[FR Doc. 90-7707 Filed 4-4-90; 8:45 am]

BILLING CODE 6210-01-M

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 previous commentary to Regulation Z comprised amendments published in the Federal Register on April 8, 1990 (54 FR 13655) to implement the Fair Credit and Charge Card Disclosure Act of 1989. The commentary addresses the amendments to Regulation Z which have been made to implement the Truth in Lending Act Consumer Protection Act of 1988. The commentary incorporates much of the guidance provided when those regulatory changes were adopted and addresses additional questions and issues previously raised regarding amendments to the new requirements as well as several issues concerning other parts of the regulation.

DATES: Effective April 1, 1989, but compliance optional until October 1, 1990.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer Credit Protection (202) 452-3697 or (202) 452-2412.

Fair Credit and Charge Disclosure Act issues: Jane Ahrens, Adrienne Hurt, John Wood.


Other open-end credit issues: Jane Ahrens, Adrienne Hurt, John Wood.

Closed-end credit issues: Michael Bylsma, Kurt Schumacher, Mary Jane Seebach.

For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Earsmpte Hill or 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 1, 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. There have been eight general updates and one limited update. This update reflects material that was published for comment at 54 FR 48233 (November 22, 1989). Creditors are free to rely on the revised commentary as of April 1, 1990, although they need not follow the revisions until October 1, 1990. (2) Revisions. Within the last year the Board adopted two major sets of amendments to Regulation Z. The first of these were amendments published in the Federal Register on April 8, 1989 (54 FR 13655) to implement the Fair Credit and Charge Card Disclosure Act of 1989. Pub. L. No. 100-583, 102 Stat. 2960 (FCCCDA). (The Board also adopted technical amendments to Regulation Z. in further implementation of FCCCDFA, published on August 11, 1989. 54 FR 32953.)

In addition to the issues arising with regard to the FCCCDA and HELPCA, additional revisions are made to other provisions of Regulation Z. For example, the commentary revisions discuss tax refund anticipation loans: a possible new mortgage product, the price-level adjusted mortgage, and open-end credit advertising. The text of all of the revisions is presented below in the order in which it appears in the commentary. To facilitate review, however, the descriptions of the revisions are presented separately for the credit and charge provisions, the home equity provisions, and the other provisions.

Credit and Charge Card Provisions

The final commentary to the regulation incorporates much of the supplementary information that accompanied the amendments in Regulation Z implementing the FCCCDA. Additional interpretations and interpretations included in the proposed comments that have been revised are noted below.

Section 226.5a—Credit and Charge Card Applications and Solicitations

Comments 5a-1 and 2 have been added, respectively, to provide general guidance on the coverage of §226.5a and to explain that a card issuer may set forth in applications that a single disclosure statement complies with §§226.5a and 226.6 (Proposed comment 5a(e)-2 has been incorporated into comment 5a-2.)

5a(a) General Rules

Comment 5a(a)(2)-3 has been revised to emphasize that only the information required or specifically permitted by this section may be included in the required table; any other credit information must appear outside of the table.

5a(b) Required Disclosures

Comment 5a(b)(1)-3 has been revised to further clarify the timing rules for a variable rate disclosure under §226.5a(d)(2) in telephone applications and solicitations; the rules correspond to those under §226.5a(d)(2). Comment 5a(b)(1)-1 has been revised to emphasize that if a card issuer uses a balloon calculation method identified in §226.5a(g), only the name, and not a description of the method, may be included in the required table.

5a(c) Direct Mail Applications and Solicitations

Comment 5a(c)-1 explains which rules govern applications and solicitations in catalogs and other publications mailed to consumers. Generally, the "take-one" rules apply. Nevertheless, where a primary purpose of a card issuer's mailing is to offer credit or charge card accounts, for example, where a card issuer mails in a credit-based prescreened list of addresses a catalog containing an application or solicitation, the direct mail rules apply. The comment also provides further guidance on the use of a single application form for both direct mailings and "take-ones."

5a(g) Balance Computation Methods Defined

Comment 5a(g)-2 has been revised to further explain the "two-cycle average daily balance" method.

Section 226.5b—Subsequent Disclosure Requirements

9(e) Disclosures Required Upon Renewal of Credit or Charge Card

The 30-day timing rule stated in the proposal has been changed in comment 9(e)-4 on the disclosure of a variable rate in a renewal notice: the rule now corresponds to the rule under §226.6(a)(2). Comment 9(e)-6 has been revised primarily to explain that a card issuer may clearly disclose when a cardholder may terminate an account to avoid paying a renewal fee. Comments 9(e)-7 through -9 have been added to provide general guidance on the timing requirements under §226.5a(e).

(Interpretations in proposed comment 9(e)-1 to -4, which have been revised and simplified, are now included in these comments.) Comment 9(e)-7 provides that where card issuers give renewal notices under §226.5a(e)(1), cardholders must be given the lesser of 30 days or 1 full billing cycle to make a decision about terminating an account; under section 226.5a(e)(2)(i), the cardholder has 30 days to make a decision. Comment 9(e)-8 states that notices are provided when mailed or delivered. Comment 9(e)-9 provides that in situations where a cardholder terminates an account and a renewal fee appears on a periodic statement, the card issuer must promptly reverse or withdraw the renewal fee. The comment also emphasizes that once a cardholder terminates an account, no additional action by the cardholder to terminate may be required.

9(e) Notification on Periodic Statements

Comment 9(e)(4)-1 has been revised to give further guidance where renewal notices are combined with periodic statements.

Section 226.26—Effect on State Laws

28(d) Special Rule for Credit and Charge Cards

The position in the proposal on the treatment of "dual purpose" applications for purposes of preemption has been changed. Comments 28(a)-1 and -2 have been revised to explain that a "dual purpose" application or solicitation—that is, one used to open either a card account for consumer purposes or a card account for business purposes—is subject only to the requirements of the federal law.

Home Equity Provisions

Although much of the final commentary is self-explanatory, provisions that have been changed significantly from the proposal are highlighted below. In addition, there are two areas that were discussed in the proposal that are not addressed in the final commentary: the rule relating to delaying detailed disclosures for the repayment period of a home equity plan, and the provision allowing a creditor to suspend advances of credit if the rate cap is reached under the plan. The Board published a notice requesting comment on whether it should delete or revise the regulation relating to these provisions. In addition, there are two areas that were discussed in the proposal that are not addressed in the final commentary: the rule relating to delaying detailed disclosures for the repayment period of a home equity plan, and the provision allowing a creditor to suspend advances of credit if the rate cap is reached under the plan. Nevertheless, where a primary purpose of a card issuer's mailing is to offer credit or charge card accounts, for example, where a card issuer mails in a credit-based prescreened list of addresses a catalog containing an application or solicitation, the direct mail rules apply. The comment also provides further guidance on the use of a single application form for both direct mailings and "take-ones."

5a(g) Balance Computation Methods Defined

Comment 5a(g)-2 has been revised to further explain the "two-cycle average daily balance" method.

Section 226.5b—Subsequent Disclosure Requirements

9(e) Disclosures Required Upon Renewal of Credit or Charge Card

The 30-day timing rule stated in the proposal has been changed in comment 9(e)-4 on the disclosure of a variable rate in a renewal notice: the rule now corresponds to the rule under §226.6(a)(2). Comment 9(e)-6 has been revised primarily to explain that a card issuer may clearly disclose when a cardholder may terminate an account to avoid paying a renewal fee. Comments 9(e)-7 through -9 have been added to provide general guidance on the timing requirements under §226.5a(e).

(Interpretations in proposed comment 9(e)-1 to -4, which have been revised and simplified, are now included in these comments.) Comment 9(e)-7 provides that where card issuers give renewal notices under §226.5a(e)(1), cardholders must be given the lesser of 30 days or 1 full billing cycle to make a decision about terminating an account; under section 226.5a(e)(2)(i), the cardholder has 30 days to make a decision. Comment 9(e)-8 states that notices are provided when mailed or delivered. Comment 9(e)-9 provides that in situations where a cardholder terminates an account and a renewal fee appears on a periodic statement, the card issuer must promptly reverse or withdraw the renewal fee. The comment also emphasizes that once a cardholder terminates an account, no additional action by the cardholder to terminate may be required.

9(e) Notification on Periodic Statements

Comment 9(e)(4)-1 has been revised to give further guidance where renewal notices are combined with periodic statements.

Section 226.26—Effect on State Laws

28(d) Special Rule for Credit and Charge Cards

The position in the proposal on the treatment of "dual purpose" applications for purposes of preemption has been changed. Comments 28(a)-1 and -2 have been revised to explain that a "dual purpose" application or solicitation—that is, one used to open either a card account for consumer purposes or a card account for business purposes—is subject only to the requirements of the federal law.
applications provided in response to a consumer's inquiry only about credit other than a home equity plan unless promotional material about home equity plans is included in the mailing.

3(b)(c) Duties of Third Parties

Comment 3(b)(c)-1 explains that the creditor is not responsible for ensuring that a third party complies with its obligations under § 226.5(b)(c).

3(b)(d) Content of Disclosures

Comment 3(b)(d)-2 has been added to discuss the duty of creditors to respond to requests from the consumer for information about the plan. The substance of this comment previously was in proposed comments 3(b)(d)(4)(ii)-1 and 3(b)(d)(6)-2. Comment 3(b)(d)(4)(ii)-1 clarifies that fees imposed when a consumer voluntarily closes out an account prior to its scheduled maturity need not be disclosed under that section. Comment 3(b)(d)(5)(ii)-1 clarifies how to disclose the length of a plan when the length is indefinite. More guidance is offered on the types of fees that must be disclosed under § 226.5(b)(d)(7) and (8), as well as more examples of the type of fees that need not be disclosed. A number of commenters objected to proposed comment 3(b)(d)(8)-1 that premiums for property insurance required by the creditor must be disclosed in all cases. These commenters argued, among other things, that in many cases insurance already was being carried on the property and that it would be difficult to provide an accurate disclosure in most cases because of the many factors involved in pricing the insurance. In light of these considerations, comment 3(b)(d)(8)-1 has been revised to permit creditors to disclose either the amount of the premium or the fact that property insurance is required. Comment 3(b)(d)(9)-1 has been added to provide guidance on when the disclosure concerning negative amortization must be made.

Additional guidance regarding the historical example required under § 226.5(b)(d)(12)(x) has been included in the final commentary in response to commenters' suggestions. Comment 3(b)(d)(12)(x)-1 explains that the example must be updated as soon as reasonably possible after the latest year's index value becomes available for consistency with the rules for closed-end adjustable-rate mortgages. Comment 3(b)(d)(12)(xi)-3 includes examples of how to disclose plans with draw and repayment periods of varying lengths in the historical example.

3(b)(f) Limitations on Home Equity Plans

Comment 3(b)(f)(2)(ii)-1 clarifies what constitutes failure to meet repayment terms for purposes of the creditor's right to terminate and accelerate. A significant number of commenters objected to proposed comment on the grounds that the statute and regulation provide that what constitutes failure to make payments should be determined by any agreement between the parties. The final comment has been revised accordingly. Creditors, of course, must comply with any state laws that address any right of the consumer to a right to cure notice, or impose other requirements.

Though creditors are prohibited from changing the margin after a plan is open, the reference to the margin as a term that need not be disclosed has been omitted from the comment 3(b)(f)(3)-1 since margins must be provided to the consumer upon request. Comment 3(b)(f)(3)-2 explains in more detail the basis for allowing creditors to pass on increases in property taxes and charges for property and credit insurance. The Board does not believe that it was intended that creditors absorb bona fide increases in such charges during the life of the plan since taxes are imposed by a government body and are beyond the control of the creditor, and insurance provides benefits apart from the line or is voluntary. Comment 3(b)(f)(3)(iii)-1 has been deleted by deleting the requirement that an advance notice of change in terms be provided when a change is made pursuant to a written agreement between the parties. Under such circumstances, the agreement itself serves as adequate notice. An example has also been added to illustrate the relationship between the general prohibition on unilateral changes and the consumer's ability to agree in writing to a contemporaneous change.

Comment 3(b)(f)(3)(vi)-4 has been revised to permit a creditor to require that a request for reinstatement of suspended credit privileges be in writing, as long as the consumer is notified of the requirement. Comment 3(b)(f)(3)(vi)-5 clarifies that a creditor may require all obligors to request reinstatement when credit privileges have been suspended upon the request of one of them. Comment 3(b)(f)(3)(vi)-7 clarifies that a material change in financial circumstances exists when a consumer files for bankruptcy. Proposed comment 3(b)(f)(3)(vi)-10 has not been incorporated in the final commentary since the Board is currently taking comment on a proposal that could delete or revise § 226.5(b)(3)(vi)(C) of the regulation.

3(b)(g) Refund of Fees

The reference to insurance premiums in proposed comment 3(b)(g)-1 has been deleted in the final since it is unlikely that additional insurance would have to be purchased in most transactions. Comment 3(b)(g)-1 has also been revised to reflect the fact that if there is a change in information provided in response to a request by the consumer pursuant to § 226.5(b)(d), and the consumer as a result decides to not enter into the plan, the creditor must refund all fees paid.

Section 226.5—Initial Disclosure Statement

4(e) Home Equity Plan Information

Comment 4(e)-1 clarifies that while creditors must disclose a list of the conditions that permit them, for example, to terminate the plan, they need not identify such conditions in the contract in a manner other than is generally required by the format rules in § 226.5(a)(1). Some commenters misunderstood the proposal as imposing a new format rule for this disclosure. Comment 4(e)-4 is revised to clarify that, to the extent the variable rate information in footnote 12 and the annual percentage rate are the same for the draw and any repayment period, the creditor need not repeat such information as long as the creditor states that the information applies to both phases. Information in the proposal relating to delaying the timing of giving the more detailed repayment disclosures has not been incorporated in the final commentary. Pending final Board action on this issue, the commentary may be revised as appropriate.

Section 226.9—Subsequent Disclosure Requirements

4(c) Change In Terms

Comment 4(c)(1)-6 is revised to reflect that a creditor need not provide advance notice of changes to the terms of a home equity plan if the change is made by written mutual agreement.

Proposed comment 4(c)(3)-1 has been renumbered as 4(c)(3)-2. New comment 4(c)(3)-1 has been added to state that if a creditor requires the consumer to request reinstatement of credit privileges to be in writing, the creditor must state that fact when notifying the consumer of the suspension.

Section 226.15—Right of Rescission

15(a) Consumer's Right to Rescind

Comment 15(a)(3)-2 clarifies that failure by a creditor to provide any of the § 226.5b disclosures does not prevent
the running of the rescission period, but may result in civil liability or administrative sanctions.

Section 226.16 Advertising
16(a) Additional Requirements for Home Equity Plans
Comment 16(d)-1 is revised to provide that a statement such as "low fees" does not trigger the need to state additional information. Comment 16(d)-1 is revised to track the disclosure rule in comment 16(d)-1 with regard to property issues. In this comment 16(d)-1 is revised to clarify the relation of the home equity advertising rules to the other open-end advertising provisions. In particular, it points out that if the creditor is required to state the annual percentage rate under § 226.16(d)—due to the use of a trigger term—the disclosures in § 226.16(b) also would be required to be included in the advertisement.

Other Provisions of Regulation Z
Section 226.12—Special Credit Card Provisions
Comment 12(a)(2)-3 provides guidance to multiple entities that share responsibility for a card, such as where a single card has been issued by a long-distance telephone company but that company and a local telephone company participate in matters such as authorization and billing. The commentary clarifies that the entity that issued the card may replace it on an unsolicited basis if it terminates the existing card, but that the other entity may not issue an unsolicited card. (Thus, in this example, the local company could not issue a new card of its own on an unsolicited basis.) In the proposed commentary update, comment was requested on whether the commentary should be revised so as to permit an additional credit card to be issued on an unsolicited basis by any of the entities in the example described above, even if the original card were not terminated. A few commenters supported such a revision. The Board does not believe that convincing policy reasons have been demonstrated, however, for altering its long-standing "one-for-one" rule.

Section 226.16—Advertising
Comment 16(b)-7 is revised to give further guidance on terms that trigger additional disclosures. For example, the comment explains that the phrase "small monthly service charge on the remaining balance" triggers additional disclosures because the statement discloses how the amount of the finance charge will be determined, not because the statement uses the term "small" in describing that a monthly service charge will be assessed.

Comment 16(b)-6 replaces a portion of the proposed revision to comment 16(b)-7, and discusses deferred billing and deferred payment programs. The comment clarifies that a statement regarding when finance charges begin to accrue is a triggering term, but that a statement concerning beginning of billing or of payment, by itself, will not trigger additional disclosures.

Section 226.17—General Disclosure Requirements
17(c) Basis of Disclosures and Use of Estimates
The proposed comments concerning "price level adjusted mortgages" (PLAMs) are included in the final commentary with minor revisions. (PLAMs have been authorized to be insured by the Department of Housing and Urban Development in a demonstration program.) Comment 17(c)(1)-17, which introduces special rules for disclosures about income tax refund anticipation loans (RALs), is revised from the proposal to clarify that the creditor must ignore a demand feature and instead base the disclosures on the estimated date a refund would be delivered to the consumer (such as by direct deposit into the consumer's account) only if, pursuant to the legal obligation, repayment of the loan is required at that time. The final comment also makes clear that a lender's practice of demanding payment when the refund is delivered does not determine what the legal obligation requires; this issue must be resolved according to applicable state or other law. Some commenters assumed that the proposed comment would require RAL lenders in all states to base the disclosures upon the estimated date a refund would be delivered regardless of the terms of the legal obligation. The comment (both as proposed and revised) is more limited due to the need for consistency with the general requirement that the disclosures reflect the terms of the legal obligation.

Section 226.19—Certain Residential Mortgage Transactions
19(b) Certain Variable-Rate Transactions
Comment 19(b)-3 is revised to provide that the creditor's requirements for accepting a proposed variable-rate transaction are payable when a periodic statement is received. Under the regulation, a reference to credit cards generally includes charge cards. The term "charge card" is, however, distinguished from "credit card" in §§ 226.5a.
Section Applications and Solicitations
5(a)(4) "Residential Mortgage
5(b)(1) Initial disclosures
5(b) Time of Disclosures

Section Requirements
sentence to read as follows:
4. Comments 5(a)(4)-5 is added to
read as follows:
5(a)(4)(J) Initial disclosures
5(a)(4)(b) Time of Disclosures
5(a)(4)(i) Initial disclosures
3. Comment 5(a)(4)-(a) is added to
read as follows:
5(a)(4)(a) Initial disclosures
2. Comment 5(a)(3)-(b) is added to
read as follows:
5(a)(3)(J) Initial disclosures

6. Multiple purpose transactions: A
transaction meets this definition of this
section if any part of the loan proceeds will
be used to finance the acquisition or initial
dwelling of the consumer. For example, a transaction to
finance the initial construction of a consumer's principal
dwelling even if a portion of the funds will be disbursed directly to the
consumer or used to satisfy a loan for the
purchase of the land on which the dwelling will be built.

Subpart B—Open-End Credit
Section 226.5 General Disclosure Requirements
4. Comment 5(a)(1)-1 is amended by
two sentences after the second sentence to read as follows:

5(b) Time of Disclosures
5(b)(1) Initial disclosures
1. Disclosures before the first
transaction. * * * The prohibition on the
payment of fees other than application or
refundable membership fees before initial
disclosures are provided does not apply to
home equity plans subject to § 226.5a. See the commentary to § 226.5(b) regarding the collection of fees for home equity plans covered by § 226.5a. * * *

3. Comments 5a-1 through 5a(g)-2 and
headings are added to read as follows:
Section 226.5a Credit and Charge Card Applications and Solicitations
1. General. Section 226.5a generally
requires that credit disclosures be contained
in application forms and preapproved solicitations initiated by a card issuer to open a
credit or charge card account. (See the commentary to § 226.5a(a)(3) and (e) for
exceptions; see also § 226.3(a)(15) and
accompanying commentary for the definition of charge card.)
2. Combining disclosures. The initial disclosures required by § 226.5a do not
substitute for the disclosures required by § 226.5a; however, a card issuer may
establish procedures so that a single disclosure statement meets the requirements
of both sections. For example, if a card issuer in complying with § 226.5a(c)(2) provides all
the applicable disclosures required under § 226.6, in a form that the consumer keep and
in accordance with the other format and timing requirements for that section, the
issuer satisfies the initial disclosure requirements under § 226.6 as well as the
disclosure requirements of § 226.5a(c)(2). Or, if in complying with § 226.5a(c) or
§ 226.5a(c)(2) a card issuer provides an integrated document that the consumer can
keep and provides the § 226.5a disclosures in a table, a format along with the
additional disclosures required under § 226.6 (presented outside of the table), the card
issuer satisfies the requirements of both §§ 226.5a and 226.6.
3a(a) General Rules
3a(a)(2) Form of Disclosures
1. Prominent location. Certain of the
required disclosures provided on or with an
application or solicitation must be
prominently located—that is, readily
noticeable to the consumer. There are,
however, no requirements that the
disclosures be in any particular location or in
any particular type size or typeface.
2. Multiple accounts or varying terms. If a
variable-rate plan is required or permitted by
the corresponding annual percentage rate. table in addition to the required disclosure of
the plan and are tied to an index or formula.
3. Additional information. The table
containing the disclosures required by § 226.5a
would contain only the information required or permitted by this section. (See the commentary to § 226.5a(b) for guidance on
information permitted in the table.) Other
credit information may be presented on or
with an application or solicitation, provided
such information appears outside the
required table.
4. Location of certain disclosures. A card
issuer has the option of disclosing any of the
terms of the plans for the single table or may provide a
separate table for each account. Similarly, if
cards or other terms vary from state to state,
card issuers may list the states and the
various disclosures in a single table or in
separate tables.
5. Terminology. In general, § 226.5a(a)(3)(i)(A)
requires that the terminology used for the disclosures specified in § 226.5a(b) be consistent with that used in the
disclosures under §§ 226.6 and 226.7. This standard requires that the § 226.5a(b)
disclosures be close in meaning to those under §§ 226.6 and 226.7, however, the
terminology used need not be identical. In
addition, § 226.5a(a)(3)(i)(B) requires that the
headings, content, and format of the tabular
disclosures be substantially similar, but need
not be identical, to the tables in Appendix G.
A special rule applies to the grace period
disclosure, however, the term “grace period”
must be used, either in the heading or in the
text of the disclosure.
6. Deletion of inapplicable disclosures. Generally, disclosures need only be given as
applicable. Card issuers may, therefore, delete inapplicable headings and then
the corresponding annual percentage rate
1. Periodic rate. The periodic rate
expressed as such, may be disclosed in the
table in addition to the required disclosure of
the corresponding annual percentage rate.
2. Variable-rate accounts—definition. For purposes of § 226.5a(c)(1), a variable-rate
account exists when rate changes are part of
the plan and are tied to an index or formula.
(See the commentary to § 226.5a(c)(2) for examples of variable-rate plans.)
Variable-rate accounts—rates in effect. For
variable-rate disclosures in direct mail
applications and solicitations subject to
§ 226.5a(c) and in applicable solicitation
solicitations made available to the general
applicable.
public subject to § 226.5a(e); the rules concerning accuracy of the annual percentage rate are stated in § 226.5a(b)(1)(ii). For variable-rate disclosures in telephone applications and solicitations subject to § 226.5a(d), the card issuer must provide an annual percentage rate currently applicable when oral disclosures are provided under § 226.5a(b)(1). For the alternative disclosures under § 226.5a(b)(2), the card issuer must provide the annual percentage rate in effect at the time the disclosures are mailed or delivered. A rate in effect also includes the rate as of a specified date (which rate is then updated from time to time, for example, each calendar month) or an estimated rate provided in accordance with § 228.3(c).

2. Variable-rate accounts or disclosures. In describing how the applicable rate will be determined, the card issuer must identify the index or formula and disclose any margin or spread added to the index or formula in arriving at the rate. The card issuer may disclose the margin or spread as a range provided in accordance with § 226.5(c).

3. Introductory rates—discounted rates. If the initial rate is temporary and is lower than the rate that will apply after the temporary rate expires, the card issuer must disclose the annual percentage rate that would otherwise apply to the account. In a fixed-rate account, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the index or formula applicable to the account as determined in accordance with the rules of § 226.5a(b)(1)(ii) and comment 5a(b)(1)-3. An initial discounted rate may be provided in the table along with the rate required to be disclosed if the card issuer also discloses the time period during which the introductory rate will remain in effect.

4. Introductory rate—premium rates. If the initial rate is temporary and is higher than the permanently applicable rate, the card issuer must disclose the initial rate. The issuer may disclose in the table the rate that would otherwise apply if the issuer also discloses the time period during which the initial rate will remain in effect.

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

1. Membership fees. Membership fees for opening an account must be disclosed under this paragraph. A membership fee to join an organization that provides a credit or charge card accounts is disclosed only if the issuer also discloses the fee in the table should clearly explain the method in as much detail as set forth in the description of balance methods in section 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.4(a)(3). (See the commentary to § 226.5a(g) for guidance on particular methods.)

2. Determining the method. In determining the appropriate balance calculation method for purchases for disclosure purposes, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method is used to disclose new purchases or covers two billing cycles only if purchase balances are not paid in full by the due date, the card issuer would disclose the name of the average daily balance method that includes new purchases or covers two billing cycles, respectively. If the card issuer should not assume the existence of new purchases or covers two billing cycles, however, in making other disclosures under § 226.5a(b).
I am able to get general public access to applications made available to banks and retail establishments. As an example, where the issuer engages in bank credit cards. If a card issuer invites a consumer to apply for a credit or charge card, the consumer accepts the invitation. A consumer applies in person for a credit or charge card account. A consumer may apply orally or in writing, regardless of the manner in which the consumer's request is received by the card issuer. Furthermore, the card issuer may provide the list of required disclosures in either § 226.5a(e)(1) or (2). Information provided in writing need not be in a tabular format.

§ 226.5a Special Charge Card Rule—Card Issuer and Person Extending Credit

1. Notice of change in credit card. Although the charge card issuer is not required to disclose information on daily balances and other generally available publications, in circumstances where a credit card is not used, the charge card issuer may disclose the information relating to the charge card plan itself.

2. Notice of creditor maintaining open-end plan. Section 226.5a(k) may require the creditor offering the open-end credit plan may be considered an agent of the charge card issuer. (See comment 2(a)(3)-1.)

3. Form of disclosures. The disclosures required by § 226.5a(f) may appear either in or outside the table containing the required credit disclosures in circumstances where a tabular format is required.

§ 226.5a Balance Computation Methods Defined

1. Daily balance method. Card issuers using the daily balance method may disclose it using the name "average daily balance (including new purchases)" or "average daily balance (excluding new purchases)" as appropriate. Alternatively, such card issuers may explain the method. (See comment 2(a)(3)-1 for a discussion of the daily balance method.)

2. Two-cycle average daily balance methods. The "two-cycle average daily balance" methods described in § 226.5a(e)(2) (i) and (ii) include those methods in which the average daily balances for two billing cycles may be added together to compute the finance charge.

3. Information disclosed. When a consumer requests credit information, card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with § 226.5a(e)(1) or (2) and a consumer calls or writes to the card issuer to obtain information about changes in the disclosures, the issuer need only provide the items of information that have changed from those previously disclosed on or with the application or solicitation. If a consumer requests information about particular items, the card issuer need only provide the requested information.

4. Manner of response. A card issuer's response to a consumer's request for credit information may be provided orally or in writing, regardless of the manner in which the consumer's request is received by the card issuer.
must continue to provide periodic statements during the draw period. these terms must be disclosed under 0 22&5b(f) throughout the 3. Disclosure of repayment phase—applicability of requirements. Some plans provide in the initial agreement for a period during which no further draws may be taken and repayment of the amount borrowed is made. All of the applicable disclosures in this section must be given for the repayment phase. Thus, for example, a creditor must provide payment information about the repayment phase as well as about the draw period, as required by § 226.5(b)(3). If the rate that will apply during the repayment phase is fixed at a known amount, the creditor must provide an annual percentage rate under § 226.5(b)(3) for that phase. If, however, a creditor uses an index to determine the rate that will apply at the time of conversion to the repayment phase—even if the rate will thereafter be fixed—the creditor must provide the information in § 226.5(b)(3)(ii), as applicable. A creditor that receives a request for information the creditor is permitted to disclose, including information that explains or expands the disclosures. When a creditor holds a mortgage or deed of trust on the consumer's principal dwelling, unless the creditor is required to provide disclosures and a brochure along with the application. The following examples apply these general rules to different situations:

1. Written disclosures. The disclosures required under this section must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. See the commentary to § 226.5(e) for special rules when disclosures required under § 226.5(b)(3) are given in a retainable form.

2. Disclosure of annual percentage rate—use of conversion of part or all of the principal balance and the amount of available credit will be replenished as the principal balance is repaid, the creditor must continue to comply with subpart B. This plan is subject to the rules applicable to home equity plans to the same degree as if a security interest were taken directly to secure the plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.

3(a) Form of disclosures

3(b) Time of Disclosures

4. Method of providing disclosures. A creditor may provide a single disclosure form for all of its home equity plans, or it may provide different forms for multiple options or features. This fact must be disclosed. A creditor that offers several payment options, all such options must be disclosed. See, however, the commentary to § 226.5(h)(3)(ii) and (3)(ii)(x) for disclosure requirements relating to these provisions.

5. Precedence rule. The list of conditions provided at the creditor's option under § 226.5(d)(4)(ii) need not precede the other disclosures.

6. Mail and telephone applications. If the creditor sends application materials by mail, the disclosures and a brochure must accompany the application. If an application is taken over the telephone, the disclosures and brochure may be delivered or mailed with the three business day notice or materials accompanying it and indicate that it can be used to apply for a home equity plan or (2) the application is provided in response to a consumer's specific inquiry about a home equity plan. On the other hand, if a general purpose application is provided in response to a consumer's specific inquiry only about credit other than a home equity plan, the disclosures and brochure need not be provided even if the application indicates it can be used for a home equity plan, unless it is accompanied by the additional disclosures required in § 1026.5(e)(2).

7. Publicly-available applications. Some creditors make applications for home equity plans, such as "take-one," available without the need for a consumer to request them. These applications must be accompanied by the disclosures and a brochure, such as by attaching the disclosures and brochure to the application form.
Duty to respond to requests for information. A creditor may solicit consumers for home equity plans by mailing a "response card" which the consumer returns to the creditor to indicate interest in the plan. If the response card is not taken by the creditor upon receipt of the response card, the creditor must provide the disclosures and brochure with the response card.

Prior to opening the plan, the creditor need not send the disclosures or brochure with the response card.

Retention of information. The creditor need not send the disclosures or brochure with the response card if the consumer returns the card within the period that an application will be approved, the creditor need not provide the consumer with the disclosures or brochure. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the disclosures or brochure.

Intermediary agent or broker. In determining whether or not an application involves an intermediary agent or broker as discussed in footnote 10a, creditors should consult the provisions in comment 19(b).3

1. Fees imposed upon termination. This disclosure applies only to fees (such as penalty or prepayment fees) that the creditor imposes if it terminates the plan prior to normal termination. The disclosure does not apply to fees that are imposed either when the plan expires in accordance with the agreement or if the consumer terminates the plan prior to its scheduled maturity. In addition, the disclosure does not apply to fees that are not linked to the consumer's failure to make payments. The actual amount of the fee need not be disclosed.

2. Changes specified in the initial agreement. If changes may occur pursuant to § 226.5b(f)(3)(i), a creditor must state that certain changes will be implemented as specified in the initial agreement.

Disclosure of conditions. In making this disclosure, the creditor may provide a highlighted copy of the document that contains such information, as the contract or security agreement. The relevant items must be distinguished from the other information contained in the document. For example, the creditor may provide a cover sheet that specifically points out which contract provisions contain the information, or may mark the relevant items on the document itself. 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) and (f)(5)(v) or language that is substantially similar. In describing specified changes that may be implemented during the plan, the creditor may provide a disclosure such as "Our agreement may permit us to make certain changes to the terms of the line at specified times or upon the occurrence of specified events."

Form of disclosure. The list of conditions under § 226.5b(f)(3) must appear with the segregated disclosures or apart from them. If the creditor elects to provide the list of conditions with the segregated disclosures, the list need not comply with the precedence rule in § 226.5b(c)(2).

Payment Terms

1. Length of the plan. The combined length of the draw period and any repayment period need not be stated. If the length of the repayment phase cannot be determined because, for example, it depends on the balance outstanding at the beginning of the repayment phase, the creditor need not provide the consumer with the length of the plan.

2. Renewal provisions. If, under the credit agreement, a consumer retains the right to renew a line at any time and to make a new draw period and determine whether to renew or extend the draw period of the plan, the possibility of renewal or extension—regardless of its likelihood—should be ignored for purposes of the disclosures. For example, if an agreement provides that the draw period is five years and that the consumer is entitled to an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years. (See the commentary accompanying § 226.5(b)(1) dealing with change in terms requirements.)

Disclosure of the determination of the periodic minimum payment. This disclosure must reflect how the minimum periodic payment is determined, but need only describe the principal and interest components of the payment. Other changes (as well as the balance computation method) may, but need not, be described under this provision.

2. Fixed rate and term payment options. During draw period. If the home equity plan permits the consumer to request a portion of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period, this feature must be disclosed. To illustrate, a variable-rate plan may permit a consumer to elect during a ten-year draw period to repay a portion of the balance over a three-year period at a fixed rate. The creditor must disclose the rules relating to this feature including the period during which the option can be selected, the length of time over which repayment can occur, any fees imposed for such a feature, and the specific rate or a description of the index and margin that will
apply upon exercise of this choice. For example, payment and not disclosure might state: "If you choose to convert any portion of your balance to a fixed rate, the rate will be the highest prime rate published in the "Wall Street Journal" that is in effect at the date of conversion plus a margin. If the fixed rate is to be determined according to an index, it must be one that is outside the creditor's control and is not obligated to disclose the amount of minimum payments under 12 C.F.R. § 226.5b(d)(5)(ii)."

2. Representative examples. In plans with multiple payment options within the draw period or within any repayment period, the disclosures must include at least one example as an alternative to providing examples for each payment option. The example may be a single example of each set of payment options.

3. Balloon payments. In programs where the occurrence of a balloon payment is possible, the creditor must disclose the possibility of a balloon payment even if such a payment is uncertain or unlikely. In such programs, the disclosure might read: "Your minimum payments may not be sufficient to fully repay the principal that is outstanding on your line. If they are not, you will be required to pay the entire outstanding balance in a single payment." In programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must state that fact. For example, the disclosure might read: "Your minimum payments may not be sufficient to fully repay the principal that is outstanding on your line. You will be required to pay the entire outstanding balance in a single payment." In making this disclosure, the creditor is not required to use the term "balloon payment." The creditor also is not required to disclose the amount of interest on the principal that is outstanding on your line. The example should reflect the payment amount and not the occurrence of a balloon payment.

Paragraph 8(e)(1)(vi)

1. Minimum periodic payment example. In disclosing the payment example, the creditor may assume that the credit limit as well as the amount outstanding on your line is $10,000. The creditor may use the same rate in determining the minimum payment. The example of the historical example is different from the index value and margin (for example, due to a rate cap); creditors should calculate the rate by using the index value and margin. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.

2. Representative examples. In plans with multiple payment options within the draw period or within any repayment period, the disclosures must include at least one example as an alternative to providing examples for each payment option. The example may be a single example of each set of payment options.

3. Balloon payments. In programs where the occurrence of a balloon payment is possible, the creditor must disclose the possibility of a balloon payment even if such a payment is uncertain or unlikely. In such programs, the disclosure might state: "If they are not, you will be required to pay the entire outstanding balance in a single payment." In programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must state that fact. For example, the disclosure might read: "Your minimum payments may not be sufficient to fully repay the principal that is outstanding on your line. If they are not, you will be required to pay the entire outstanding balance in a single payment." In making this disclosure, the creditor is not required to use the term "balloon payment." The creditor also is not required to disclose the amount of interest on the principal that is outstanding on your line. The example should reflect the payment amount and not the occurrence of a balloon payment.

Paragraph 8(e)(3)(ii)

4. Reverse mortgages. Reverse mortgages, also known as reverse annuity or home equity conversion mortgages, are options for permitting the consumer to obtain advances, may involve the disbursement of monthly advances of the index value and margin. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.

1. Minimum periodic payment example. In disclosing the payment example, the creditor may assume that the credit limit as well as the amount outstanding on your line is $10,000. The creditor may use the same rate in determining the minimum payment. The example of the historical example is different from the index value and margin (for example, due to a rate cap); creditors should calculate the rate by using the index value and margin. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.

2. Representative examples. In plans with multiple payment options within the draw period or within any repayment period, the disclosures must include at least one example as an alternative to providing examples for each payment option. The example may be a single example of each set of payment options.

3. Balloon payments. In programs where the occurrence of a balloon payment is possible, the creditor must disclose the possibility of a balloon payment even if such a payment is uncertain or unlikely. In such programs, the disclosure might state: "If they are not, you will be required to pay the entire outstanding balance in a single payment." In programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must state that fact. For example, the disclosure might read: "Your minimum payments may not be sufficient to fully repay the principal that is outstanding on your line. If they are not, you will be required to pay the entire outstanding balance in a single payment." In making this disclosure, the creditor is not required to use the term "balloon payment." The creditor also is not required to disclose the amount of interest on the principal that is outstanding on your line. The example should reflect the payment amount and not the occurrence of a balloon payment. The example should be an example within each category of the disclosure, such as credit insurance or the terms of the payment options.

4. Reverse mortgages. Reverse mortgages, also known as reverse annuity or home equity conversion mortgages, are options for permitting the consumer to obtain advances, may involve the disbursement of monthly advances of the index value and margin. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.
Sb(d)(8) Fees imposed by Third Parties to each fee, or as a percentage of a typical or specified date. (See the discussion contained in § 226.5b(f)(3)(i).)

- Rebates of third party fees. Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to § 226.5b(f)(7)).

- Negative Amortization

1. Disclosure required. In transactions where the minimum payment will not or may not be sufficient to cover the interest that accrues on the outstanding balance, the creditor must disclose that negative amortization will or may occur. This disclosure is required whether or not the unpaid interest is added to the outstanding balance upon which interest is computed. A disclosure is not required merely because a loan calls for non-amortizing or partially amortizing payments.

2. Rebates of third party fees. Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to § 226.5b(f)(7)).

3. Form of disclosures. The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest rates imposed under any periodic rate limitations that may be applicable to the creditor's home equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.

Example: 3. The maximum rate payment example. In calculating the payment creditors should assume the maximum rate is in effect. Any unannounced changes in the original periodic rate limitations should be ignored for purposes of this disclosure. If a range is used to disclosure the maximum cap under § 226.5b(d)(12)(iv), the highest rate in the range must be used for the disclosure under this paragraph. As an alternative to making disclosures based on each payment option, the creditor may choose a representative range for such fees or state the dollar amount of such fees. Fees may be expressed on a unit cost basis. For example, $5 per $1,000 of credit.

Footnotes: 1. Applicability. Section 226.5b(d)(8) applies only to fees imposed by third parties to open an account. Thus, for example, this section does not require disclosure of a fee imposed by a government agency at the end of a plan to release a security interest. Fees to be disclosed include appraisal, credit report, government agency, and attorneys fees. In cases where property insurance is required by the creditor, the creditor either may disclose the amount of the premium or may state that property insurance is required. For example, the disclosure might state. "You must carry insurance on the property that secures this plan."

2. Rebates of third party fees. Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to § 226.5b(f)(7)).

3. Form of disclosures. The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest rates imposed under any periodic rate limitations that may be applicable to the creditor's home equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.

Example: 3. The maximum rate payment example. In calculating the payment creditors should assume the maximum rate is in effect. Any unannounced changes in the original periodic rate limitations should be ignored for purposes of this disclosure. If a range is used to disclosure the maximum cap under § 226.5b(d)(12)(iv), the highest rate in the range must be used for the disclosure under this paragraph. As an alternative to making disclosures based on each payment option, the creditor may choose a representative range for such fees or state the dollar amount of such fees. Fees may be expressed on a unit cost basis. For example, $5 per $1,000 of credit.

Footnotes: 1. Applicability. Section 226.5b(d)(8) applies only to fees imposed by third parties to open an account. Thus, for example, this section does not require disclosure of a fee imposed by a government agency at the end of a plan to release a security interest. Fees to be disclosed include appraisal, credit report, government agency, and attorneys fees. In cases where property insurance is required by the creditor, the creditor either may disclose the amount of the premium or may state that property insurance is required. For example, the disclosure might state. "You must carry insurance on the property that secures this plan."

2. Rebates of third party fees. Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to § 226.5b(f)(7)).

3. Form of disclosures. The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest rates imposed under any periodic rate limitations that may be applicable to the creditor's home equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.

Example: 3. The maximum rate payment example. In calculating the payment creditors should assume the maximum rate is in effect. Any unannounced changes in the original periodic rate limitations should be ignored for purposes of this disclosure. If a range is used to disclosure the maximum cap under § 226.5b(d)(12)(iv), the highest rate in the range must be used for the disclosure under this paragraph. As an alternative to making disclosures based on each payment option, the creditor may choose a representative range for such fees or state the dollar amount of such fees. Fees may be expressed on a unit cost basis. For example, $5 per $1,000 of credit.

Footnotes: 1. Applicability. Section 226.5b(d)(8) applies only to fees imposed by third parties to open an account. Thus, for example, this section does not require disclosure of a fee imposed by a government agency at the end of a plan to release a security interest. Fees to be disclosed include appraisal, credit report, government agency, and attorneys fees. In cases where property insurance is required by the creditor, the creditor either may disclose the amount of the premium or may state that property insurance is required. For example, the disclosure might state. "You must carry insurance on the property that secures this plan."

2. Rebates of third party fees. Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to § 226.5b(f)(7)).

3. Form of disclosures. The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest rates imposed under any periodic rate limitations that may be applicable to the creditor's home equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.
payment options upon which to base this disclosure. See the commentary to § 226.5b(d)(12). However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods. Creditors should calculate the example for the repayment period based on an assumed $10,000 balance. (See the comments to § 226.5b(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

1. To the maximum rate could be reached. In stating the date or time when the maximum rate could be reached; creditors should assume the rate increases as rapidly as possible under the plan. In calculating the date or time, creditors should factor in any discounted or premium initial rates and periodic rate limitations. This disclosure must provide for the full draw phase and repayment phase. Creditors should assume the index and margin shown in the last year of the historical example (or a more recent rate) is in effect at the beginning of each phase.

Paragraph 5b(d)(12)(i)

1. Index movement. Index values and annual percentage rates must be shown for the entire 15 years of the historical example and must be used for the most recent 16 years. The example must reflect the method of choosing index values. The historical example should include payments for all of its various payment option within each of the three categories of payments upon which to base its disclosure. (See the commentary to § 226.5b(d)(13).)

2. Selection of index. The historical example must reflect the method of choosing index values for the plan. For example, if an average of index values is used in the plan, averages must be used in the example, but if an index value as of a particular date is used, a similar value must be used in the historical example. The creditor is required to assume one date (or one period, if an average is used) within a year as the initial index value. The example must reflect the method of choosing index values as soon as reasonably possible after the new index value becomes available. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values have been available and must reflect the historical example for the year for which values are first available.

3. Selection of values. The historical example must reflect the method of choosing index values for the plan. For example, if an average of index values is used in the plan, averages must be used in the example, but if an index value as of a particular date is used, a similar value must be used in the historical example. The creditor is required to assume one date (or one period, if an average is used) within a year as the initial index value. The example must reflect the method of choosing index values as soon as reasonably possible after the new index value becomes available. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values have been available and must reflect the historical example for the year for which values are first available.

4. Selection of indexes. The historical example must reflect the method of choosing index values for the plan. For example, if an average of index values is used in the plan, averages must be used in the example, but if an index value as of a particular date is used, a similar value must be used in the historical example. The creditor is required to assume one date (or one period, if an average is used) within a year as the initial index value. The example must reflect the method of choosing index values as soon as reasonably possible after the new index value becomes available. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values have been available and must reflect the historical example for the year for which values are first available.

5. Rate limitations. Rate limitations must always be shown in the example. Rate limitations that may apply more often than annually should be treated as if they were annual limitations. Only one index can be used in a year. In such cases, the creditor can assume that the $10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan, and that the consumer takes no subsequent draws. As discussed in the commentary to § 226.5b(d)(13), creditors should not assume an additional advance is taken at the beginning of an index period. If applicable, the creditor may assume the $10,000 is both the advance and the credit limit. (See the commentary to § 226.5b(d)(12)(i) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

6. Payment options. The creditor should assume that the $10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan, and that the consumer takes no subsequent draws. As discussed in the commentary to § 226.5b(d)(13), creditors should not assume an additional advance is taken at the beginning of an index period. If applicable, the creditor may assume the $10,000 is both the advance and the credit limit. (See the commentary to § 226.5b(d)(12)(i) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

7. Payment information. The payment figures in the historical example must reflect all significant program terms. For example, features such as rate and payment caps, a capped or accounted rate, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have applied to the plan. The historical example should include payments for as much of the length of the loan as would occur during a 15-year period. For example:

1. If the draw period is 10 years and the repayment period is 15 years, the example should reflect the entire 10-year draw period and the first 5 years of the repayment period.

2. If the length of the draw period is 15 years and there is a 15-year repayment phase, the historical example must reflect the payments for the 15-year draw period and would not show any of the repayment period. No additional historical example would be required to reflect payments for the repayment period.

3. If the length of the plan is less than 15 years, payments in the historical example may only be shown for the number of years in the term. In such cases, however, the creditor must show the index values, margin and annual percentage rates and continue to

S-26798
001400\18-MAY-96-18:14:44

9. Disclosures for repayment period. The historical example must reflect all features of the repayment period, including the appropriate index values, margin, rate limitations, length of the repayment period, and payments. For example, if different index values are used during the draw and repayment periods, the index values for that portion of the 15 years that reflect the repayment period must be the values for the appropriate index.

Paragraph 5b(d)(12)(ix)

1. Substitutes. A substitute for this Board's home equity brochure is not available. Anyone desiring to reproduce the Board's brochure in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the Board's brochure.

2. Effect of third party delivery of brochure. If a creditor determines that a third party has provided a consumer with the required brochure pursuant to § 226.5b(d)(5), the creditor need not give the consumer a second brochure.

Paragraph 5b(d)(11)

1. Coverages. Section 226.5f limits both actions that may be taken and language that may be included in contracts and applies to any assignee or holder as well as to the original creditor. The limitations apply to any right to which the consumer's control. Thus, a creditor may not make rate changes based on its own prime rate or cost of funds and may not reserve a contractual right to change rates at its discretion. A creditor is permitted, however, to use a published prime rate such as that in the Wall Street Journal, even if the bank's
own grace period is one of several rates used to establish the published rate.
2. Publicly available. The index must be available to the public. A publicly available index need not be published in a newspaper, but it must be open to the consumer and any question or complaint about rates (for example) and use to verify rates imposed under the plan.

3. Provisions not prohibited. This paragraph does not prohibit rate changes that are specifically set forth in the agreement. For example, a new repayment plan, in which rates are imposed for specified periods, may be a permissible arrangement. In addition, preferred rate provisions, in which the rate increases by a specified amount upon the occurrence of a specified event, also are permissible.

Paragraph 3b(2)
1. Limitations on termination and acceleration. In general, creditors are prohibited from terminating and accelerating payment of the outstanding balance before the scheduled expiration of a plan. However, creditors may take those actions in the three circumstances specified in § 226.5e(2)(2).

Creditors are not permitted to specify in their contracts any other events that allow termination and acceleration beyond those permitted by the regulation. Thus, for example, an agreement may not provide that the balance is payable on demand nor may it provide that the account will be terminated and the balance accelerated if the rate cap is reached.

2. Other actions permitted. If an event permitting termination and acceleration occurs, a creditor may instead take actions short of terminating and accelerating. For example, a creditor could temporarily or permanently suspend further advances, reduce the credit limit, change the payment terms, or require the consumer to pay a fee. A creditor also may provide in its agreement that a higher rate or higher fees will apply if the consumer fails to meet the repayment terms. A creditor may accelerate the balance when the consumer fails to meet the repayment terms specified in the agreement. However, a creditor may terminate and accelerate under this provision only if the consumer actually fails to make the required payments. For example, a creditor may not terminate and accelerate if the consumer, in error, makes a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under this provision if the consumer fails to meet the repayment terms of the agreement. This section does not override any state or other law that requires a no-notice-to-cure notice, or otherwise places a duty on the creditor before it can terminate a plan and accelerate the balance.

Paragraph 3b(2)(ii)
1. Impairment of security. A creditor may terminate and accelerate under this provision if the consumer's action or inaction adversely affects the creditor's security for the plan. For example, if the consumer fails to meet the repayment terms of the agreement, the creditor may terminate and accelerate if the consumer's action or inaction adversely affects the creditor's security for the plan.

2. Examples.
(a) The consumer transfers title to the property or sells the property without the permission of the creditor.
(b) The consumer fails to maintain required insurance on the dwelling.
(c) The consumer fails to pay taxes on the property.
(d) The property is taken through eminent domain.

A prior lienholder forecloses. By contrast, the filing of a judgment against the consumer would permit termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. If the consumer commits waste or otherwise destructively uses or fails to maintain the property such that the property adversely affects the security, the plan may be terminated and the balance accelerated. Illegal use of the property by the consumer would permit termination and acceleration only if one of the following is true. In the case of the consumer's action or inaction, the creditor must take action at a later time. A contract that specifies a lien on the property is taken through eminent domain.

Paragraph 3b(2)(iii)
1. Failure to meet repayment terms.

A creditor may terminate a plan and accelerate the balance when the consumer fails to meet the repayment terms provided for in the agreement. However, a creditor may not terminate and accelerate under this provision only if the consumer actually fails to make the required payments. For example, a creditor may not terminate and accelerate if the consumer, in error, makes a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under this provision if the consumer fails to meet the repayment terms of the agreement. This section does not override any state or other law that requires a no-notice-to-cure notice, or otherwise places a duty on the creditor before it can terminate a plan and accelerate the balance.

Paragraph 3b(2)(ii)
Paragraph 3(f)(iv)

1. Changes by written agreement. A creditor may change the terms of a plan if the consumer expressly agrees in writing to the change at the time it is made. For example, a consumer and a creditor could agree in writing to change the repayment terms from interest-only payments to payments that reduce the principal balance. The provisions of any such agreement are governed by the limitations in § 226.5(i).

2. Written agreement. The change must be agreed to in writing by the consumer. Creditors are not permitted to assume consent because the consumer uses an account; even if use of an account would otherwise constitute acceptance of a proposed change under state law.

Paragraph 3(f)(v)

1. Beneficial changes. After a plan is opened, a creditor may make changes that unequivocally benefit the consumer. Under this provision, a creditor may make more options to consumers, as long as existing options are not eliminated. For example, a creditor may offer the consumer the option of lower monthly payments or could increase the credit limit. Similarly, a creditor wishing to extend the length of the plan on the same terms may do so. Creditors are permitted to temporarily reduce the rate or fees charged during the plan (though a change in terms noticed may be required under § 226.5(b) when the rate or fees are returned to their original level). Creditors also may offer an additional means of access to the line, even if fees are associated with using the device, provided the consumer retains the ability to use prior access devices on the original terms.

Paragraph 3(f)(vi)

1. Insufficient changes. A creditor is permitted to make insufficient changes after a plan is opened. This rule accommodates operational and similar problems, such as changing the address of the creditor for purposes of sending payments. It does not permit a creditor to charge a term such as a fee charged for late payments.

2. Examples of insufficient changes. Creditors may make minor changes to features such as the billing cycle date, the day of the month on which index values are measured to determine changes to the variable rate plan. A creditor also may change its rounding practice in accordance with the creditor's policy set forth in § 226.5(b) for example, stating an exact APR of 14.3333 percent as 14.3 percent, even if it had previously been stated as 14.33 percent. A creditor may change the balance computation method if it uses only if the change produces an insignificant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the average daily balance method (including new transactions) to the daily balance method (including new transactions).
Creditors must, however, use the best information reasonably available in providing disclosures about such fees. 

A refund of fees required if any disclosed fees paid by the consumer in connection with the application. All fees, including credit report fees and appraisal fees, must be refunded whether such fees are paid to the creditor or directly to third parties. A consumer is entitled to a refund of fees under these circumstances whether or not terms are guaranteed by the creditor under § 226.5b(f)(2)(i).

2. Variable-rate plans. The right to a refund of fees does not apply to changes in the annual percentage rate resulting from fluctuations in the index value in a variable-rate plan. Also, if the maximum annual percentage rate is expressed as an amount over the initial rate, the right to refund of fees would not apply to changes in the capped interest rate resulting from fluctuations in the index value.

3. Changes in terms. If a term, such as the maximum rate, is stated as a range in the early disclosures, and the term ultimately applicable to the plan falls within that range, a change does not occur for purposes of this section. If, however, no range is used and the term is changed (for example, a rate cap of $6 rather than 5 percentage points over the initial rate), the change would permit the consumer to obtain a refund of fees. If a fee imposed by the creditor is stated in the early disclosures as an estimate and the fee changes, the consumer could elect not to enter into the plan because of the changed fee. If the consumer elects not to enter into the plan because of a change in terms (that is, course, all fees must be refunded if the consumer later rescinds under § 226.13.)

Section 226.6 Initial Disclosure Statement

7. Comment 6(a)(2)-1 is amended by adding a sentence after the first sentence of the flush text following the third bulleted paragraph to read as follows:

(a) Finance Charge
Paragraph 6(a)(2) 

1. Additional disclosures required. For home equity plans, creditors must provide several additional disclosures. The disclosures set forth in § 226.5b(d) along with the disclosures required under § 226.6. Creditors must also disclose a list of the restrictions that permit the consumer to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms.

2. Form of disclosures. The home equity disclosures required under this section must be in a form the consumer can keep, and are governed by § 226.5a(i)(1). The segregation standard set forth in § 226.5a(a) does not apply to home equity disclosures provided under § 226.6.

3. Disclosure of payment and variable-rate examples. The payment example disclosure in § 226.5b(d)(12)(viii) and the variable-rate information in § 226.5b(d)(12) (viii), (ix), (x), (xi) and (xii) must be provided with the disclosures under § 226.8.

4. The disclosures under § 226.5b(d) were provided in a form the consumer could keep.

5. The disclosures of the payment example under § 226.5b(d)(12)(viii), the maximum payment example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(x) included a representative payment example for each category of payment options the consumer has chosen.

For example, if a creditor offers three or more categories of loan options, the creditor must provide three or more payment examples for each category of payment options the consumer has chosen.

10. Comment 9(c)(1)-(6) is added to read as follows:

3. Change in Terms

1. "Changes" initially disclosed. * * * The rules in § 226.6(f) relating to home equity plans, however, limit the ability of a creditor to change the terms of such plans.

10. Section 226.9 Subsequent Disclosure Requirements

9. Comment 9(c)(1)- is amended by adding a sentence at the end to read as follows:

4. Home equity plans. If a creditor renews the draw period for a home equity plan on terms different from those of the original plan, the requirements of § 226.6(e) apply to such a change. When the terms are changed pursuant to a written agreement as described in § 226.5b(f)(3)(iii), the advance notice requirement does not apply.

11. Comments 9(c)(1)-(3) and 9(c)(3)-2 and a heading are added to read as follows:

F4700.FMT...[16.30]...7-08-88
unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid monthly charges of the cardholder at the time of cancellation, the amount due within the coming year but after the first month, the notice must disclose that fact.

6. Terminating credit availability. Card issuers have some flexibility in determining the procedures for how and when an account may be terminated. However, the card issuer must clearly disclose the time by which the cardholder must act to terminate the account to avoid paying a renewal fee. State and other applicable law governs the card issuer may impose requirements such as specifying the cardholder's response whether in writing or that the outstanding balance be repaid in full upon termination.

7. Timing of termination by cardholder. When a card issuer provides notice under § 226.9(e)(1), a cardholder must be given at least 30 days or one billing cycle, whichever is less, from the date the notice is mailed or delivered to make a decision whether to terminate an account. When notice is given under § 226.9(e)(1), a cardholder has 30 days from mailing or delivery to decide to terminate an account.

8. Timing of notice. A renewal notice is deemed to be provided when mailed or delivered. Similarly, notice of termination is deemed to be given when mailed or delivered.

9. Prompt reversal of renewal fee upon termination. In a situation where a cardholder has provided timely notice of termination and a renewal fee has been billed to a cardholder's account, the card issuer must reverse or otherwise withdraw the fee promptly. Once a card account has been terminated an account, no additional action by the cardholder may be required.

9(e) Notice on Periodic Statements. When a card issuer discloses a single disclosure is used to comply with both §§ 226.9(e) and 226.7, the periodic statement must comply with the rules in §§ 226.9(e) and 207. For example, the words "grace period" must be used and the name of the balance calculation method must be identified (if listed in § 226.3(c)(3)) to comply with the requirements of § 226.9(e). Even though the use of those terms would not otherwise be required for periodic statements under § 226.7, this paragraph applies to periodic statements for the purpose of providing a reference indicating that they relate to one another. All renewal disclosures must be provided to a cardholder at the same time.

9(f) Substantial Decrease in Coverage. This paragraph applies to substantial decrease in coverage will result from the change in providers determined by the two-part test in § 226.9(f)(2). First, whether the decrease is in a significant term of a coverage second, whether the decrease might reasonably be expected to affect a cardholder's decision to continue the insurance. If both conditions are met, the decrease must be disclosed in the notice

Section 226.12 Special Credit Card Provisions

10. Consumer Insuance of Credit Cards

Paragraph 9(g)(2)

9. Multiple entities. Where multiple entities share responsibilities with respect to a credit card issued by one of them, the entity that issued the card may replace it on an
Comments to 15(a)(3) are amended to read as follows:

1. Trigger terms. Negative as well as affirmative references trigger the requirement for additional disclosure. For example, if a creditor states "no annual fee," "no points," or "we waive closing costs" in an advertisement, additional information must be provided. (See comment 16(d)-4 regarding the use of a phrase such as "no closing costs." Inclusion of a statement such as "low fees," however, would not trigger the need to state additional information. Reference to payment terms include references to the draw period or any repayment period, to the length of the draw period, to how the minimum payments are determined and to the timing of such payments.

2. Fees to open the plan. Section 226.16(d)(3)(i)(l) requires a disclosure of any fees imposed by the creditor or a third party to open the plan. In providing the fee information required under this paragraph, the corresponding rules for disclosure of this information apply. For example, fees to open the plan may be stated as a range. Similarly, if property insurance is required to open the plan, a creditor either may estimate the cost of the insurance or provide a statement that such insurance is required. (See the commentary to §226.5b(d)(7) and (b)).

3. Statements of tax deductibility. An advertisement referring to deductibility for tax purposes is not misleading if it includes a statement such as "consult a tax advisor regarding the deductibility of interest." Misleading terms prohibited. Under §226.16(d), advertisements may not refer to home equity plans as "free money" or use other misleading terms. For example an advertisement could not state "no closing costs" or "we waive closing costs" if consumers may be required to pay any closing costs such as recordation fees.

4. Other considerations. Advertisements for home equity plans must comply with all provisions in §226.16, not solely the rules in §226.16(d). If an advertisement contains information (such as the payment terms) that triggers the duty under §226.16(d) to state the annual percentage rate, the additional disclosures in §226.16(b) must be provided in the advertisement. While §226.16(d) does not require a statement of fees to use or maintain the plan (such as membership fees and transaction charges), such fees must be disclosed under §226.16(b)(1) and (3).

5. Inapplicability of closed-end rules. Advertisements for home equity plans are governed solely by the requirements in §226.16, and not by the closed-end advertising rules in §226.17. Thus if a creditor states payment information about the repayment phase, this will trigger the duty to provide additional information under §226.16, but not under §226.24.

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

Comment 17(b)-2 is amended to read as follows:

1. Time of Disclosure.

2. Converting open-end to closed-end credit. Except for home equity plans subject to §226.55(b), which the plan provides for a repayment phase, if an open-end credit account is converted to a closed-end program, the creditor shall provide a disclosure to the consumer. The creditor must provide a set of closed-end credit disclosures before the conversion of the closed-end transaction.

17(c) Basis of Disclosures and Use of Expressions

23. Comments to 17(c)(1) are amended by adding flush text to follow the third bulleted paragraph of comment 17(c)(1)-4; by adding a fourth bulleted paragraph before the last paragraph of comment 17(c)(1)-11; and by adding a new comment 17(c)(1)-17. To read as follows:

Paragraph 17(c)(1)

4. Consumer buydowns. The rules regarding consumer buydowns do not apply to transactions known as "lender buydowns." In lender buydowns, a creditor pays an amount (either into an account or to the party to whom the obligation is sold) to reduce the consumer's payments or interest rate for all or a portion of the credit term. Typically, these transactions are structured as a buydown of the interest rate during an initial period of the transaction with a higher than usual rate for
the remainder of the term. The disclosures for lender buydowns should be based on the terms of the transaction, not the terms of the consumer and the creditor. (See comment 17(c)(3) for the analogous rules concerning third-party buydowns.)

11. Other variable-rate transactions: * * *
   * Price level adjusted mortgages or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. Unusual interest rates are to be based on the fixed interest rate.
   * * *

17. Special rules for tax refund anticipation loan (RAL) transactions: RAL transactions are in which a creditor will lend up to the amount of a consumer's expected tax refund. RAL agreements typically require repayment upon demand or is payable either on demand or at a date. In addition, to the extent that any fees and charges are for RALs in addition to fees for filing the application or solicitation that may be used in consumer credit or charge card applications or solicitations. (For purposes of this section, a single credit or charge card application or solicitation that may be used to open either an account for consumer

20. Time of Disclosure

3. Written application. * * * (See comment 19(b)-3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.)

25. Comments to 19(b) are amended by adding parenthetical information after the second sentence in comment 19(b)-2: by redesigning comments 19(b)-3 and 19(b)-4 to be comments 19(b)-5 and 19(b)-6, respectively: by adding new comment 19(b)-7, in redesigning comment 19(b)-5. In the second bulleted paragraph, the last sentence should appear as flush text below that paragraph and by adding a third bulleted paragraph preceding the flush text to newly redesignated comment 19(b)-5 to read as follows:

19(b) Certain Variable-Rate Transactions

2. Timing. * * * (see comment 19(b)-3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.)

3. Intermediary agent or broker. In certain transactions involving an "intermediary agent or broker," a creditor may delay providing disclosures. A creditor may not delay providing disclosures to transactions involving either a legal agent (as determined by applicable law) or any other third party that is not an "intermediary agent or broker." In determining whether or not a transaction involves an "intermediary agent or broker" the following factors should be considered:

* The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the creditor. The greater the percentage of total loan applications submitted by broker in any given period of time the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor during the next period.

* The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the creditor. The greater the percentage of total loan applications submitted by broker in any given period of time the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor during the next period.

* 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. The more preparation that the broker has performed, 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 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.

5. Examples of variable-rate transactions: * * * Price level adjusted mortgages or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. The disclosures under § 226.15(b)(1) are not applicable to such loans. nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest rate, or interest rate discounts.

Section 226.20 Subsequent Disclosure Requirements

28. Comment 20(c)-2 is revised to read as follows:

20(c) Variable-Rate Adjustments

* * *

2. Exceptions. Section 226.20(c) does not apply to "shared-equity," "shared-appreciation," or "price level adjusted" or similar mortgages.

Subpart D—Miscellaneous

Section 226.75 Record Retention

27. Comment 25(a)-4 is added to read as follows:

25(a) General Rule

* * *

4. Home equity plans. In home equity plans that incorporate the requirements of § 226.5b, written procedures for compliance with those requirements as well as a sample disclosure form and contract for each home equity program represent adequate evidence of compliance. (See comment 25(a)-2 pertaining to permissible methods of retaining the required disclosures.)

Section 226.28 Effect on State Laws

28. Comments 28(d)-1 through 28(d)-3 and a. heading are added to read as follows:

28(d) Special Rule for Credit and Charge Cards

1. General. The standards that apply to preemption of state laws as they affect transactions of the type subject to §§ 226.25 and 226.26(a) differs from the preemption standards generally applicable under the Truth in Lending Act. The Fair Credit and Charge Card Disclosure Act fully preempts state laws relating to the disclosure of credit information in consumer credit or charge card applications or solicitations. (For purposes of this section, a single credit or charge card application or solicitation that may be used to open either an account for consumer
purposes or an account for business purposes is described to be a "consumer credit charge card" charge card application or solicitation. For example, a state law requiring disclosure of credit terms in direct mail solicitations for consumer credit card accounts is preempted. A state law requiring disclosures in telephone applications for consumer credit card accounts also is preempted; even if it applies to applications initiated by the consumer rather than the issuer, because the state law relates to the disclosure of credit information in applications or solicitations within the general field of preemption. That is, consumer credit and charge cards.

2. Field of Preemption

Preemption under the Fair Credit and Charge Card Disclosure Act does not extend to state laws applying to types of credit other than open-end consumer credit and charge card accounts. Thus, for example, a state law is not preempted if it applies to disclosures in credit and charge card applications and solicitations solely for business-purpose accounts. On the other hand, state credit disclosure laws will not apply to a single application or solicitation to open either an account for consumer purposes or an account for business purposes. Such "dual purpose" applications and solicitations are treated as "consumer credit or charge card applications or solicitations." Indicate in the applicable state's credit disclosure laws applicable to them are preempted. Preemption under this statute does not extend to state laws applicable to home equity plans: preemption determinations in this area are based on the Home Equity Loan Consumer Protection Act and regulations thereunder, section 226.5f of the regulation.

3. Laws not Preempted

State laws relating to disclosures concerning credit and charge cards other than in applications, solicitations, or renewal notices are not preempted under § 226.28(d). In addition, state laws regulating the terms of credit and charge card accounts are not preempted, nor are laws preempted that regulate the form or content of information unrelated to the information required to be disclosed under §§ 226.5a and 226.4(b). Finally, state laws concerning the enforcement of the requirements of §§ 226.5a and 226.4(c) and state laws prohibiting unfair or deceptive acts or practices concerning credit and charge card applications, solicitations and renewals are not preempted. Examples of laws that are not preempted include:

- A state law that requires card issuers to offer a grace period or that prohibits certain fees in credit and charge card transactions.
- A state law with respect to retail installment sales law or a state plain language law, except to the extent that it regulates the disclosure of credit information in applications or solicitations and renewals of accounts of the type subject to this section.
- A state law requiring notice of a consumer's rights under antidiscrimination or similar laws or a state law requiring notice about credit information available from state authorities.

Section 226.30 Limitations on Rates

Comment 30-1 is amended by revising the text of the second bulleted paragraph and the italicized text preceding the third bulleted paragraph is republished by revising the first sentence in the fourth bulleted paragraph and by adding a sixth disclosure paragraph before the italicized text which appears at the end of comment 30-1 to read as follows:

1. Scope of coverage

- Examples of credit obligations subject to this section include:
  - Dwelling-secured open-end credit plans entered into before November 7, 1989 (the effective date of the state home equity rules) that are not considered variable-rate obligations for purposes of disclosure under the regulation but where the creditor reserves the contractual right to increase the interest rate-periodic rate and corresponding annual percentage rate—during the term of the plan. In contrast, credit obligations in which there is no contractual right to increase the interest rate during the term of the obligation are not subject to this section. Examples include:
    - Dwelling-secured fixed-rate closed-end balloon-payment mortgage loans and dwelling-secured fixed-rate open-end plans with a stated term that the creditor may renew at maturity.
    - "Price level adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and balances to reflect changes in an index measuring prices or inflation.

Comment 30-11 is amended by adding the following sentence to the fourth sentence, to read as follows:

- Increasing the maximum interest rate—general rule.
  - Furthermore, where an open-end plan has a fixed maturity and a lower rate enters into a closed-end credit transaction, a new maximum interest rate may be set at that time. If the open-end plan provides for a repayment phase, the maximum interest rate cannot be increased when the repayment phase begins unless the agreement provided for such an increase.

Appendix G—Open-End Model Forms and Clauses

Comment 30-7 is amended by adding the following:

- Models G-13(A) and G-13(B) illustrate the disclosure for charge card applications and solicitations and reflects all of the disclosures in the table. Disclosures may be arranged in an order different from that in model forms G-10(A), (B), and (C). may be arranged vertically or horizontally; need not be highlighted aside from being included in the table and are not required to be in any particular type size. Various features from different model forms may be combined; for example, the shorter grace period disclosure in model form G-10(B) may be used in any disclosure. While proper use of the model forms will be deemed in compliance with the regulation, card issuers are permitted to use the headings and disclosures other than those in the forms (with an exception relating to the use of "grace period") if they are self-explanatory and consistent and are substantially similar to the headings and disclosures contained in model forms. For further discussion of requirements relating to form, see the commentary to § 226.54(a)(2).

6. Model G-11 and G-12. Model G-11 contains clauses that illustrate the general disclosures required under § 226.54(a) in applications and solicitations made available to the general public. Model G-12 is a model clause for the disclosures required under § 226.54(b)(2) when a charge card accesses an open-end plan offered by another creditor. Models G-10(A) and G-12(B). These model forms illustrate the disclosures required under § 226.54(f) when the card issuer changes the entity providing insurance on a credit card account. Model G-13(A) contains the items set forth in § 226.54(f)(2) as examples of significant terms of coverage that may be affected by the change in insurance provider. The card issuer must either list all of these potential changes in coverage and place a check mark by the applicable changes, or list only the actual changes in coverage. Under either approach, the card issuer must either explain the change or provide the cardholder with a new policy or certificate for details of the new terms of coverage. Model G-13(A) also illustrates the permissible combination of the two notices required by § 226.54(f)—the notice required for a planned change in provider and the notice required once a change has occurred. This form may be modified for use in providing only the disclosures required before the change if the card issuer chooses to send two separate notices. Thus, for example, the references to the attached policy or certificate would not be required in a separate notice prior to a change in the insurance provider since the policy or certificate would not be provided until a change in provider. Section 226.54 illustrates the disclosures required under § 226.54(f)(2) when the insurance provider is changed.


William W. Wilks
Secretary of the Board

[FR Doc. 90-7708 Filed 4-4-90; 2:32 pm]
BILLING CODE 1514-01-P