as to what maximum limits for such periods would still permit the irregular periods to be considered regular in computing the annual percentage rate.

If the period from the date on which the finance charge begins to accrue and the date the final payment is due is not less than three months in the case of weekly payments, six months in the case of biweekly or semimonthly payments, or one year in the case of monthly payments, the maximum interval of time from the date the finance charge begins to accrue to the date the first payment is due is as follows:

(1) in the case of weekly payments, 12 days;
(2) in the case of biweekly or semimonthly payments, 25 days;
(3) in the case of monthly payments, 50 days

If the period from the date on which the finance charge begins to accrue and the date the final payment is due is less than three months in the case of weekly payments, six months in the case of biweekly or semimonthly payments, or one year in the case of monthly payments, the maximum interval of time from the date the finance charge begins to accrue to the date of the first payment is due is as follows:

(1) in the case of weekly payments, 10 days;
(2) in the case of biweekly or semimonthly payments, 21 days;
(3) in the case of monthly payments, 42 days.

6/10/69

SECTION 226.504—TREATMENT OF "PICK-UP PAYMENT" IN AN INSTALMENT CONTRACT

In some instances involving an instalment contract arising from a credit sale, the purchaser may not pay the full amount of the required downpayment at the time he signs the contract or otherwise enters into the credit transaction. In such cases, the creditor may include in the instalment contract or accept a separate obligation for the unpaid portion of the downpayment, commonly called a "pick-up payment," the amount of which usually carries no finance charge and is to be paid on or before a specified date independent of the other scheduled payments.

The question arises whether the "pick-up payment" must be treated as part of the "amount financed" for purposes of disclosure and determination of the "annual percentage rate" or whether it may be treated as a deferred portion of the downpayment.

In determining the "amount financed" the creditor may exclude the amount of the "pick-up payment" provided that:

(1) The amount of the finance charge applicable to the transaction does not exceed the amount that would have been imposed had the required down payment been paid in full upon consummation of the transaction; and

(2) The due date of the "pick-up payment" is not later than the due date of the second payment otherwise scheduled.

In making the disclosures required under § 226.8 (b) (3), if such "pick-up payment" is more than twice the amount of an otherwise regularly scheduled equal payment, the creditor shall state the conditions, if any, under which such "pick-up payment" may be refinanced if not paid when due; and such "pick-up payment" may be identified using that term or the term "balloon payment."

9/11/69

226.505—APPLICATION OF THE MINOR IRREGULARITIES PROVISIONS IN DETERMINING THE AMOUNT OF THE FINANCE CHARGE

Some creditors calculate finance charges in a credit transaction on the basis of predetermined percentage rate or rates, e.g., 1% per month on the unpaid balances. Determination of the amount of the finance charge is fairly routine for these creditors if the contracts are written for regular payments at regular intervals. However, many times the first payment may be irregular either in amount or payment period, or both, especially in those instances where creditors require payments to fall due on fixed dates or those who are paid by means of payroll deductions. The minor irregularities provisions of § 226.5(d) of the Regulation and § 226.503 of the interpretations to Regulation Z, which pertain to the determination of the annual percentage rate, also apply to the determination of the finance charge. For convenient reference, the applicable provisions of § 226.5(d) and § 226.503 as they apply to the determination of the finance charge are set forth below.

In determining the finance charge, a creditor may, at his option, consider the payment irregularities set forth below in subparagraphs (1) and (2) as if they were regular in amount or time, as applicable, provided that the transaction to which they relate is otherwise payable in equal instalments scheduled at equal intervals.

(1) If the period from the date on which the finance charge begins to accrue and the date the final payment is due is not less than 3 months in the case of weekly payments, 6 months in the case of biweekly or semimonthly payments, or 1 year in the case of monthly payments either or both of the following:

(i) The amount of 1 payment other than any downpayment is not more than 50 per cent greater nor 50 per cent less than the amount of a regular payment; or

(ii) The interval between the date on which the finance charge begins to accrue and the date the first payment is due is not less than 5 nor more than 12 days for an obligation otherwise payable in weekly instalments, not less than 10 nor more than 25 days for an obligation otherwise payable in biweekly or semimonthly instalments, or not less than 20 nor more than 50 days for an obligation otherwise payable in monthly instalments.

(2) If the period from the date on which the finance charge begins to accrue and the date the final payment is due is less than 3 months in the case of weekly payments, 6 months in the case of biweekly or semimonthly payments, or 1 year in the case of monthly payments, either or both of the following:

(i) The amount of 1 payment other than any downpayment is not more than 25 per cent greater nor 25 per cent less than the amount of a regular payment; or

(ii) The interval between the date on which the finance charge begins to accrue and the date the first payment is due is not less than 6 nor more than 10 days for an obligation otherwise payable in weekly instalments, not less than 12 nor more than 21 days for an obligation otherwise payable in biweekly or semimonthly instalments, or not less than 25 nor more than 42 days for an obligation otherwise payable in monthly instalments.

For the purposes of § 226.8(b)(3) in disclosing the number, amount and due dates or periods of payments scheduled to repay the indebtedness and the "total of payments," the creditor may treat such irregular payments or payment periods, or both, as if they were regular. If the creditor so elects, he may indicate the exact amount or payment period involved in the minor irregularity.

9/11/69

SECTION 226.6

SECTION 226.601—OVERSTATEMENT OF ANNUAL PERCENTAGE RATE

Section 226.6(h) of Regulation Z provides that in certain circumstances the disclosure of an annual percentage rate which is greater than that required to be disclosed under the Regulation does not in itself constitute a violation of the Regulation. Under this section may a disclosure regarding an annual percentage rate (e.g. "the annual percentage rate does not exceed 18%") be preprinted on a contract or periodic statement and comply with disclosure requirements when the actual rate will at times be lower (e.g. 15%) for some transactions?

Section 226.5 specifies the methods which shall be employed in determining annual percentage rates. Section 226.6(h) is not intended to provide an alternative to these requirements, but is merely to provide appropriate relief to a creditor who overstates accidentally. Any disclosure of an annual percentage rate whether preprinted or otherwise which overstates the annual percentage rate determined in accordance with section 226.5 other than through inadvertence does not comply with requirements.

4/2/69

SECTION 226.602—TRANSITION PERIOD—USING EXISTING FORMS, SUITABLY ALTERED OR SUPPLEMENTED

Section 226.6(k) of Regulation Z provides that, in some circumstances, if a creditor has been unable to obtain needed new printed forms by July 1, 1969, he may use existing forms until new ones are obtained, but not later than December 31, 1969. In such instances, the existing forms must be suitably altered or supplemented to make necessary disclosures clearly and conspicuously. The requirement that existing forms be supplemented is met by attachments or enclosures.

Also in some instances, creditors encounter unavoidable delays in obtaining necessary equipment or computer programs needed to utilize new printed forms. Such delays can produce problems comparable to those involved in delays in obtaining printed forms. In such a situation, a creditor, under § 226.6(k), may continue to use existing forms until the means of utilizing the new forms are available, but in no event later than December 31, 1969, and subject, of course, to the conditions applicable under § 226.6(k): namely, that the creditor must have taken *bona fide* steps prior to July 1, 1969, to obtain the

necessary equipment or computer programs, and the existing forms must be "altered or supplemented as necessary to assure that all of the items of information the creditor is required to disclose are set forth clearly and conspicuously."

4/2/69

SECTION 226.603—DISCLOSURES IN TRANSACTION INVOLVING MULTIPLE CUSTOMERS

Section 226.6(e) states the general rule that, except in the case of a rescindable transaction under § 226.9, where there are multiple customers in a transaction, the creditor is only required to make disclosures to one of them. However, in determining which customer shall receive disclosures, the creditor may not select a customer who is secondarily liable, such as an endorser, comaker (when designated as surety), guarantor, or a similar party. This does not prohibit the creditor from also furnishing disclosures to such persons who are secondarily liable.

4/2/69

SECTION 226.604—INCONSISTENT STATE REQUIREMENTS

Section 226.6(5) of Regulation Z indicates types of State law requirements that are inconsistent with Regulation Z, and § 226.6(c) indicates the methods of dealing with such inconsistent requirements of State law.

Whether State laws are inconsistent with Regulation Z necessarily depends on the nature of the State laws. Section 226.6(b) (1) provides that State law is inconsistent to the extent that it "requires a creditor to make disclosures different from the requirements of this part with respect to form, content, terminology, or time of delivery." This refers to disclosures of the kinds of information covered by Regulation Z, and *not* to other or collateral information such as a statement telling the customer that he should read the contract carefully, or that there should be no blanks in the contract. Similarly, it does not refer to headings that State law may require on a contract such as "Retail Installment Contract." Similarly, a specification in a State law that certain size type must be used is not necessarily inconsistent with the requirements of Regulation Z.

4/22/69

SECTION 226.605—RATE CHARTS AND TABLES UNAVAILABLE

Subject to certain conditions, § 226.6(f) of Regulation Z permits a creditor to use an estimate or approximation of information when the information is "unknown or not available to the creditor, and the creditor has made a reasonable effort to ascertain it."

It appears that some creditors who require special charts or tables in order to operate with necessary efficiency in compliance with Regulation Z, and who have placed orders for such charts or tables with suppliers of them, may be unable to obtain such charts or tables by July 1, 1969, the effective date of Regulation Z.

In the circumstances indicated, when the necessary charts or tables have been ordered prior to July 1 1969, and are temporarily unavailable to a creditor who has thus made a reasonable effort to obtain them, § 226.6(f) permits the creditor to use an estimate or approximation of the annual percentage rate and other information during the interim until they become available, subject, of course, to the other requirements of that paragraph.

6/20/69

SECTION 226.7

SECTION 226.701—PERIODIC STATEMENTS—FINANCE CHARGE RESULTING FROM MORE THAN ONE PERIODIC RATE

Section 226.7(b) (4) of Regulation Z requires that a periodic statement for open end credit show the amount of any finance charge, and that the statement also itemize and identify that portion of the finance charge that is due to application of one or more periodic rates and that portion due to any other charge such as minimum, fixed, check service, transaction, activity, or similar charge.

This does not require the statement to state separately the portions of a finance charge due to application of two or more periodic rates. For example, if a creditor charges 1½% per month on the first $500 of a balance and 1% per month on amounts over $500, the monthly charge on a $600 balance would be $8.50, which must be shown. However, it would not be necessary to itemize the two components ($7.50 and $1.00) of the $8.50 charge. Under section 226.7(b) (5), the periodic rates that may apply to the account, and the applicable range of balances must, of course, be shown, but this could be preprinted.

4/2/69

SECTION 226.702—LOCATION OF STATEMENT OF HOW THE BALANCE WAS DETERMINED

Section 226.7(b)(8) requires the creditor of an open end credit account to disclose on the periodic statement, "the balance on which the finance charge was computed, and a statement of how that balance was determined." Under § 226.7(c) which relates to the location of disclosures there is no specific reference to the placement of the "statement of how that balance was determined" when separated from the balance to which it relates. The question arises as to where, under such circumstances, this required statement shall appear on the periodic statement.

If separated from the balance to which it relates, the required statement of how the balance was determined may be placed on the face of the periodic statement, the reverse side of the periodic statement, or on an enclosed supplement; however, where such statement and balance do not appear together, the statement shall make clear the balance to which it refers.

4/22/69

SECTION 226.703—FINANCE CHARGE BASED ON AVERAGE DAILY BALANCE IN OPEN END CREDIT ACCOUNTS

Section 226.7(b)(8) requires that periodic statements for open end accounts shall disclose, among other things, "The balance on which the finance charge was computed, and a statement of how that balance was determined." In some instances, creditors compute a finance charge on the average daily balance by application of a monthly periodic rate. In such case, this information is adequately disclosed if the statement gives the amount of the average daily balance on which the finance charge was computed, and also states how the balance is determined. In other instances, the finance charge is computed on the balance each day by application of a daily periodic rate and such charges are accumulated and debited to the account in a single amount for the billing cycle. The question arises whether the periodic statement must show for each day of the billing cycle a balance on which a finance charge was computed.

If a daily periodic rate is used, the balance to which it is applicable shall be stated as follows:

(1) A balance for each day in the billing cycle; or

(2) The sum of the daily balances during the billing cycle, or

(3) The average daily balance during the billing cycle in which case the creditor shall state on the face of the periodic statement, its reverse side, or on an enclosed supplement that the average daily balance is multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of the finance charge.

In each case the annual percentage rate shall be determined and disclosed by multiplying the daily periodic rate by 365.

5/5/69

SECTION 226.704—ANNUAL PERCENTAGE RATE COMPUTATION WHERE TRANSACTION CHARGES ARE IMPOSED ON OPEN END CREDIT ACCOUNTS

Section 226.7(b)(6) prescribes the method by which an annual percentage rate is computed where the creditor of the open end credit account imposes finance charges with respect to specific transactions during the billing cycle.

In determining the denominator of the fraction under § 226.7(b)(6), no amount will be used more than once when adding the sum of the balances to which periodic rates apply to the sum of the amounts financed to which specific transaction charges apply. In every case the full amount of transactions to which specific transaction charges apply shall be included in the denominator. Other balances or parts of balances shall be included according to the manner in which a periodic rate is applied, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance—none

   A specific transaction of $100 occurs on first day of the billing cycle.

   The average daily balance is $100.

   A specific transaction charge of 3% is applicable to the specific transactions.

   The periodic rate is 1½% applicable to the average daily balance.

   The numerator is the amount of the finance charge, which is $4.50.

   The denominator is the amount of the transaction (which is $100), plus the amount by which the balance to which the periodic rate applies exceeds the amount of specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4.5%) multiplied by 12 (the number of months in a year), i.e. 54%.

2. Previous balance—$100
   A specific transaction of $100 occurs at midpoint of the billing cycle.
   The average daily balance is $150.
   A specific transaction charge of 3% is applicable to the specific transaction.
   The periodic rate is 1½% applicable to the average daily balance.
   The numerator is the amount of finance charge, which is $5.25.
   The denominator is the amount of the transaction (which is $100), plus the amount by which the balance to which the periodic rate applies exceeds the amounts of specific transactions (such excess in this case is $50), totaling $150.
   As explained in example 1, the annual percentage rate is 3.5% x 12 = 42%.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100, plus the balance to which only the periodic rate is applicable, the $100 previous balance).
   As explained in example 1, the annual percentage rate is 2.25% x 12 = 27%.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credit) and the customer made a payment of $50 at midpoint of billing cycle, the numerator is $3.75 and the denominator is $150 (the amount of the transaction, $100 plus the balance to which only the periodic rate is applicable, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2.5% x 12 = 30%.

5. Previous balance—$100
   A specific transaction (check) of $100 occurs at the midpoint of the billing cycle.
   The average daily balance is $150.
   The specific transaction charge is 25 cents per check. The periodic rate is 1½% applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50, and includes the 25 cents check charge and the $2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1⅔% x 12 = 20%.

Regardless of such method of computation, the annual percentage rate to be disclosed shall be not less than the periodic rate multiplied by the number of periods in a year or the rate as may otherwise be determined under § 226.5(a).

5/5/69

SECTION 226.8

SECTION 226.801—LOCATION OF DISCLOSURES WHEN CONTRACT, SECURITY AGREEMENT, AND EVIDENCE OF TRANSACTION ARE COMBINED IN A SINGLE DOCUMENT

Some creditors incorporate the terms of a contract, a security agreement, and evidence of a transaction in a single document. These documents are designed for processing by mechanical and electronic equipment. If all of the required disclosures under § 226.8 should be placed on the face of such a document, the creditor will be unable to utilize conventional accounting and record keeping equipment because of the size of the resulting document. The question arises as to whether required disclosures may be made on the face and the reverse side of such a document.

Where a creditor elects to combine disclosures with the contract, security agreement, and evidence of a transaction in a single document, the disclosures required under § 226.8 shall, in accordance with § 226.6, be made on the face of that document, on its reverse side, or on both sides, provided that the amount of the finance charge and the annual percentage rate shall appear on the face of the document, and, if the reverse side is used, the printing on both sides of the document shall be equally clear and conspicuous, both sides shall contain the statement, "NOTICE: See other side for important information," and the place for the customer's signature shall be provided following the full content of the document.

4/22/69

SECTION 226.802—DISCLOSURES ON MAIL OR TELEPHONE ORDERS

Under § 226.8(g), disclosures may be made at any time not later than the date the first payment

is due under certain conditions. The question arises as to when disclosures shall be made on mail or telephone orders where the information outlined in § 226.8(g)(1) and (2) is not available to the customer or prospective customer.

Under the circumstances set forth in the above question, the creditor shall make the disclosures required under Regulation Z as follows:

1. With respect to credit sales, not later than at the time of delivery of the property or first performance of service ordered.
2. With respect to loans, not later than at the time proceeds of the loan are disbursed.
3. Except that if the transaction is subject to the provisions of § 226.9, the disclosures shall be made before the transaction is consummated.

5/5/69

SECTION 226.803—DISCLOSURES WHEN DISCOUNTS APPLY FOR PROMPT PAYMENT

Under § 226.8(o), disclosures shall be made on the billing statement whereas under § 226.8(a) disclosures shall be made before the transaction is consummated. The question arises as to which provision prevails.

The provisions of § 226.8(o) prevail under the conditions set forth in that paragraph unless the transaction is also subject to the provisions of § 226.9 in which event the disclosures shall be made before the transaction is consummated.

5/5/69

SECTION 226.804—SERIES OF SALES—CONTENT OF AGREEMENT

Under § 226.8(h), if a credit sale is one of a series of transactions made under an agreement providing for the addition of a current sale to an existing outstanding balance and the customer has approved in writing the annual percentage rate or rates and certain other requirements are met, disclosures may be made at any time not later than the date the first payment for that sale is due.

The question arises as to how the annual percentage rate or rates should be shown in an agreement where, for example, an 18% annual percentage rate applies to the first $500 of balance, a 12% annual percentage rate applies to all balances over $500, and the mix of the two rates on transactions over $500 will produce a gradually decreasing annual percentage rate as the amount of balance over $500 increases.

In addition to meeting the other requirements of § 226.8(h), if two or more annual percentage rates apply to ranges of balances, the agreement need only state each annual percentage rate and the range of balances to which it applies. However, the disclosures which must be made not later than the date the first payment is due must include the actual annual percentage rate applicable to that sale.

5/5/69

SECTION 226.805—SERIES OF SALES AS DISTINGUISHED FROM REFINANCING, CONSOLIDATING, OR INCREASING

The question arises as to the distinction between the provisions of § 226.8(h), series of sales, and the provisions of § 226.8(j), refinancing, consolidating, or increasing.

Section 226.8(h) is applicable *only* when a credit sale is made pursuant to an agreement which provides for the addition of a current (or new) sale to an existing outstanding balance. In such cases, and provided that all of the requirements of § 226.8(h)(1) and (2) are met, the disclosures may be made at any time not later than the date the first payment for that sale is due.

If there is no agreement, or if the agreement does *not* meet all of the requirements of § 226.8(h), the disclosures required in connection with any subsequent sale, which is added to a previously outstanding balance shall be made under the provisions of § 226.8(j). For example, the fact that an agreement provides a method of computing an unearned portion of the finance charge in the event of prepayment, but does not otherwise meet the requirements of § 226.8(h), will not qualify transactions made pursuant to that agreement for disclosure under the terms of § 226.8(h).

5/26/69

SECTION 226.806—DEPOSIT BALANCES APPLIED TOWARD SATISFACTION OF CUSTOMER'S OBLIGATION

Section 226.8(e)(2) provides that required deposit balances must be deducted under § 226.8(e)(6) and excluded under § 226.8(d)(1) in determining the amount financed. Subdivision (ii) of § 226.8(e)(2) provides an exception in the case of Morris Plan type transactions in which payments in the transaction are made and accumulated in a deposit account which is then wholly applied to satisfy the obligation.

Unless the deposit balance account is created for the sole purpose of accumulating payments and then being applied toward satisfaction of the customer's obligation in the transaction, such deposit balance does not fall within the exception provided in subdivision (ii).

In any case in which a deposit balance qualifies for this exception, each deposit made into the account shall be considered the same as a payment on the obligation for the purpose of computations and disclosures.

5/26/69

SECTION 226.807—ASSUMPTION OF AN OBLIGATION—DISCLOSURES

The question arises as to which disclosures are required to be made under § 226.8(k).

For the purposes of § 226.8(k), an "assumption" occurs only when, by written agreement entered into between a subsequent customer and the creditor, that subsequent customer is or will be accepted by that creditor as an obligor on an existing evidence of debt. In such circumstances, disclosures shall be made as follows:

(1) If the finance charge originally imposed on the existing evidence of debt was an add-on or discount type finance charge, the creditor need only disclose:

(i) The unpaid balance of the obligation assumed;

(ii) The total amount of the charges imposed by the creditor, individually itemized, in connection with the assumption;

(iii) The number, amount, and due dates of remaining payments to be made after assumption, the total of such payments, and any other applicable information required under § 226.8(b)(3);

(iv) Identification of the type of security interest, if any, retained or to be acquired in any property of the assuming customer and a brief identification of that property;

(v) The information required to be disclosed under § 226.8(b)(4), (6) and (7);

(vi) If applicable in connection with the assumption, the disclosures required under § 226.4(a)(5) and (6); and

(vii) If that obligation was entered into on or after July 1, 1969, the annual percentage rate originally disclosed on the existing obligation.

(2) If the existing evidence of debt is subject to a finance charge computed from time to time by application of a percentage rate to an unpaid balance, the creditor shall make the disclosures required under § 226.8(b) and (d) and, if applicable in connection with the assumption, the disclosures required under § 226.4(a) (5) and (6), except that in determining the amount of the finance charge and the annual percentage rate to be disclosed to the customer who assumes the obligation, the creditor may disregard any prepaid finance charges paid by the original customer, but shall include in the finance charge as as "prepaid finance charge" the total amount of the charges imposed by the creditor, individually itemized, in connection with the assumption.

6/10/69

SECTION 226.808—DISCLOSURE OF AMOUNT OF SCHEDULED PAYMENTS

Section 226.8(b)(3) requires the creditor to disclose the "amount . . . of payments scheduled to repay the indebtedness." In certain transactions each payment consists of an equal amount to apply on principal and a finance charge which is determined by application of a rate to the decreasing unpaid balance. In such cases no two payments are equal in amount. The question arises as to whether it is necessary to list the respective dollar amount of each such payment to comply with this requirement of § 226.8(b)(3), or whether an optional disclosure is permitted.

In any transaction in which the amount of each regularly scheduled payment (other than a first or last payment) includes an equal amount to be applied on principal and a finance charge computed by application of a rate to the decreasing unpaid balance, at the creditor's option the requirement of § 226.8(b)(3) with respect to the amount of each payment may be met by disclosing the following information:

(1) The amount of each payment to be applied on principal, and an identification of that amount as payment on principal;

(2) The respective amount of finance charge included in the first and last scheduled payments so described;

If this option is utilized, the exceptions provided under paragraphs (b)(3), and (c)(8) and (d)(3) of § 226.8 shall not apply.

6/10/69

SECTION 226.809—DISCLOSURES FOR CERTAIN STUDENT LOANS

Footnotes 10 and 11 to Regulation Z provide an exception from specified disclosure requirements for interim student loans under certain Federally insured student loan programs. These exceptions are applicable to other student loans of the same type including those made to students under Federally supported loan programs or programs of loan guarantee, administered by or under agreement with the U.S. Department of Health, Education, and Welfare. In all of such cases, however, all disclosures must be made prior to the time the final note is executed or repayment schedule is agreed upon.

6/10/69

SECTION 226.810—DISCLOSURES—VARIABLE INTEREST RATES

In some cases a note, contract, or other instrument evidencing an obligation provides for prospective changes in the annual percentage rate or otherwise provides for prospective variation in the rate. The question arises as to what disclosures must be made under these circumstances when it is not known at the time of consummation of the transaction whether such change will occur or the date or amount of change.

In such cases, the creditor shall make all disclosures on the basis of the rate in effect at the time of consummation of the transaction and shall also disclose the variable feature.

If disclosure is made prior to the consummation of the transaction that the annual percentage rate is prospectively subject to change, the conditions under which such rate may be changed, and, if applicable, the maximum and minimum limits of such rate stipulated in the note, contract, or other instrument evidencing the obligation, such subsequent change in the annual percentage rate in accordance with the foregoing disclosures is a subsequent occurrence under § 226.6(g) and is not a new transaction.

6/20/69

SECTION 226.811—RENEWALS OF NOTES BY MAIL

Under paragraph (j) of § 226.8, renewals of notes with new maturity dates constitute refinancings and are consequently new transactions. A common practice is for creditors to permit renewal of such notes by mail. In many such instances the creditor does not know whether the customer will reduce his original obligation by a payment on principal or, if reduced, the amount of that reduction. The question arises as to what disclosures should be made by mail to the customer in these circumstances.

If the creditor knows the amount of the principal payment, all disclosures should be made on the basis of the resulting new amount financed. If, however, the creditor does not know whether the customer will reduce his original obligation, or if so, by how much, he should disclose on the assumption that there will be no reduction. In such circumstances he may make one or more additional disclosures based on one or more examples of graduated principal reduction. For example, if a single payment note was for $1,000 at 8% for 3 months, in addition to the other required disclosures, the creditor should disclose an amount financed of $1,000 with a finance charge of $20, and may, in addition, disclose that with a principal payment of $300 the amount financed would be $700 with a finance charge of $14, and with a principal payment of $500 the amount financed would be $500 with a finance charge of $10.

8/1/69

SECTION 226.9

SECTION 226.901—WAIVER OF SECURITY INTERESTS—EFFECT ON THE RIGHT OF RESCISSION

Section 226.9(a) provides for a right of rescission "in the case of any [consumer] credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer." Under § 226.2(z) security interests include mechanic's and materialmen's liens. If a creditor effectively waives his right to retain, or to acquire such a lien, he has not retained or acquired such security interest. The question arises, however, of whether waiver of a creditor's lien rights is effective to remove a transaction from the scope of rescission when lien rights which are not waived arise in favor of subcontractors, workmen, or others who are not creditors in the transaction.

The fact that the creditor waives his lien rights does not, in itself, determine whether or not the

transaction is rescindable. If *all* security interests are effectively waived, the transaction is not rescindable. On the other hand, if as a result of the transaction, a security interest is or will be retained or acquired by a subcontractor, workman, or other person, the transaction is rescindable. In the latter case the creditor would be responsible for delivering the rescission notice as well as other applicable disclosures, delaying performance as provided under § 226.9(c), and identifying himself as the creditor on the rescission notice. The subcontractors, workmen, and others would not be responsible for delivering rescission notices to the customer.

5/26/69

SECTION 226.902—"CUSTOMERS" AND JOINT OWNERS OF PROPERTY UNDER THE RIGHT OF RESCISSION

Section 226.9(f) provides that, for the purpose of the right of rescission, "customer" shall include two or more customers where joint ownership is involved. The question arises of whether this means that all joint owners of record, regardless of whether or not they are parties to the transaction, are customers for this purpose, and whether each of such owners of record (1) must receive disclosures and a notice of the right of rescission, (2) may exercise the right of rescission, and (3) must join in signing a waiver if one is appropriately taken by the creditor.

Under § 226.9(f) where there are joint owners the right to receive disclosures and notice of the right of rescission, the right to rescind, and the need to sign a waiver of such right, apply only to those joint owners who are parties to the transaction.

5/26/69

SECTION 226.903—REFINANCING AND INCREASING—DISCLOSURES AND EFFECTS ON THE RIGHT OF RESCISSION

In some cases the creditor of an obligation will refinance that obligation at the request of a customer by permitting the customer to execute a new note, contract, or other document evidencing the transaction under the terms of which one or more of the original credit terms, including the maturity date of the obligation, are changed. Although such refinancing constitutes a new transaction, and all disclosures required under § 226.8 must be made, the question arises as to whether that transaction is subject to the right of rescission under § 226.9 where the obligation is already secured by a security interest in real property which is used or expected to be used as the principal residence of that customer.

If the amount of such new transaction does not exceed the amount of the unpaid balance plus any accrued and unpaid finance charge on the existing obligation, § 226.9 does not apply to the transaction.

If, however, such new transaction is for an increased amount, that is, for an amount in excess of the amount of the unpaid balance plus any accrued and unpaid finance charge on the existing obligation, § 226.9 applies to the transaction. However, such right of rescission applies only to such excess and does not affect the existing obligation (or related security interest) for the unpaid balance plus accrued unpaid finance charge.

If a transaction is refinanced by a creditor other than the creditor of the existing obligation, the entire transaction is subject to § 226.9.

6/20/69

SECTION 226.10

SECTION 226.1001—ADVERTISING OF CREDIT TERMS IN OTHER THAN OPEN END CREDIT

The statement of certain credit terms in advertisements such as "no downpayment", the amount of any instalment payments, dollar amount of finance charge, number of payments, etc., as provided in § 226.10(d)(2), requires that certain other terms also be stated in the same advertisement. The question arises as to how a creditor may advertise credit terms in a meaningful way when all of his credit sales or loans are not made on the same basis.

The advertising of credit terms may be made by giving one or more examples of typical extensions of credit and stating all of the terms applicable to each example. In any such case, the advertiser shall set forth one or more examples which are, in fact, typical of the type of credit and terms usually and customarily made available by the creditor to present and prospective customers and each shall be clearly and conspicuously identified as examples of typical transactions.

4/22/69

SECTION 226.1002—CATALOGS—TABLES OR SCHEDULES OF CREDIT TERMS

Under § 226.10(b) in order that a catalog may qualify as a single advertisement, among other things, it must include a table or schedule of credit terms. It has been the practice of catalog houses to include such tables in catalogs; however, such tables generally state amounts of purchases, amounts of finance charges, and number and amount of payments for brackets up to a certain level and then contain an instruction to include a specified dollar amount in computing the finance charge by application of a percentage rate on any purchase in excess of that level. Tables to show the actual terms including annual percentage rates for all purchases into thousands of dollars would be unwieldy, present a formidable appearance, and may be more confusing than helpful to the user. The question arises as to whether a creditor who publishes a catalog is required to include tables in detailed amounts from the minimum up to, for example, $5,000, his highest priced cataloged merchandise.

Tables or schedules of terms in catalogs must include all amounts up to a level of the more commonly sold higher priced property or services which are offered for sale, but in no event greater than $1,000 unless the creditor elects to do so. If the creditor offers property or service for sale at prices higher than the uppermost level covered by his table, he shall state the method by which the finance charge is computed on larger amounts, how the amount of payments and the number and periods of payments are determined and state, for each representative amount in increments of not more than $500 up to the highest priced property or service offered, the annual percentage rate. Any catalog which contains such a table or schedule of credit terms will comply with requirements of § 226.10(b) provided all other requirements are met and such catalog shall be considered adequate for the purpose of § 226.8(g)(1).

4/22/69

[Interpretations available from Publications Services, Division of Administrative Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.]

BOARD OF GOVERNORS

of the

FEDERAL RESERVE SYSTEM

TRUTH IN LENDING

REGULATION

(12 CFR 226)
Effective July 1, 1969

Amended August 11, 1969

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REGULATION

Z

(12 CFR 226)
Effective July 1, 1969

Amended August 11, 1969

TRUTH IN LENDING

REGULATION *

SECTION 226.1—AUTHORITY, SCOPE, PURPOSE, ETC.

(a) **Authority, scope, and purpose.** (1) This Part comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to Title I (Truth in Lending Act) and Title V (General Provisions) of the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146 et seq.) Except as otherwise provided herein, this Part applies to all persons who in the ordinary course of business regularly extend, or offer to extend, or arrange, or offer to arrange, for the extension of consumer credit as defined in paragraph (k) of § 226.2.

(2) This Part implements the Act, the purpose of which is to assure that every customer who has need for consumer credit is given meaningful information with respect to the cost of that credit which, in most cases, must be expressed in the dollar amount of finance charge, and as an annual percentage rate computed on the unpaid balance of the amount financed. Other relevant credit information must also be disclosed so that the customer may readily compare the various credit terms available to him from different sources and avoid the uninformed use of credit. This Part also implements the provision of the Act under which a customer has a right in certain circumstances to cancel a credit transaction which involves a lien on his residence. Advertising of consumer credit terms must comply with specific requirements, and certain credit terms may not be advertised unless the creditor usually and customarily extends such terms. Neither the Act nor this Part is intended to control charges for consumer credit, or interfere with trade practices except to the extent that such practices may be inconsistent with the purpose of the Act.

(b) **Administrative enforcement.** (1) As set forth more fully in section 108 of the Act, administrative enforcement of the Act and this part with respect to certain creditors is assigned to the Comptroller of the Currency, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), Director of the Bureau of Federal Credit Unions, Interstate Commerce Commission, Civil Aeronautics Board, Secretary of Agriculture, and Board of Governors of the Federal Reserve System.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the Act and this part will be enforced by the Federal Trade Commission.

* This text corresponds to the Code of Federal Regulations, Title 12, Chapter II, Part 226, cited as 12 CFR 226. The words "this Part", as used herein, mean Regulation Z.

(c) **Penalties and liabilities.** Section 112 of the Act provides for criminal liability for willful and knowing failure to comply with any requirement imposed under the Act and this Part, and section 130 of the Act provides for civil liability on the part of any creditor who fails to disclose any information required under Chapter 2 of the Act and under the corresponding provisions of this Part. Pursuant to section 108 of the Act, violations of the Act or this Part constitute violations of other Federal laws which may provide further penalties.

SECTION 226.2—DEFINITIONS AND RULES OF CONSTRUCTION

For the purposes of this Part, unless the context indicates otherwise, the following definitions and rules of construction apply:

(a) **"Act"** refers to the Truth in Lending Act (Title I of the Consumer Credit Protection Act).

(b) **"Advertisement"** means any commercial message in any newspaper, magazine, leaflet, flyer or catalog, on radio, television or public address system, in direct mail literature or other printed material, on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag which is delivered or made available to a customer or prospective customer in any manner whatsoever.

(c) **"Agricultural purpose"** means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(d) **"Amount financed"** means the amount of credit of which the customer will have the actual use determined in accordance with paragraphs (c)(7) and (d)(1) of § 226.8.

(e) **"Annual percentage rate"** means the annual percentage rate of finance charge determined in accordance with § 226.5.

(f) **"Arrange for the extension of credit"** means to provide or offer to provide consumer credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit receives or will receive a fee, compensation, or other consideration for such service or has knowledge of the credit terms and participates in the preparation of the contract documents required in connection with the extension of credit. It does not include honoring a credit card or similar device where no finance charge is imposed at the time of that transaction.

(g) **"Billing cycle"** means the time interval between regular periodic billing statement dates. Such intervals may be considered equal intervals of time unless a billing date varies more than 4 days from the regular date.

(h) **"Board"** refers to the Board of Governors of the Federal Reserve System.

(i) **"Cash price"** means the price at which the creditor offers, in the ordinary course of business, to sell for cash the property or services which are the subject of a consumer credit transaction. It may include the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements, and may include taxes to the extent imposed on the cash sale, but shall not include any other charges of the types described in § 226.4.

(j) **"Comparative Index of Credit Cost"** means the relative measure of the cost of credit under an open end credit account, computed in accordance with § 226.11, and is the expression of the "average effective annual percentage rate of return" and the "projected rate of return" which appear in section 127(a)(5) of the Act.

(k) **"Consumer credit"** means credit offered or extended to a natural person, in which the money, property, or service which is the subject of the transaction is primarily for personal, family, household, or agricultural purposes and for which either a finance charge is or may be imposed or which, pursuant to an agreement, is or may be payable in more than 4 instalments. "Consumer loan" is one type of "consumer credit."

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

(m) **"Creditor"** means a person who in the ordinary course of business regularly extends or

arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit.

(n) **"Credit sale"** means any sale with respect to which consumer credit is extended or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

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

(p) **"Dwelling"** means a residential-type structure which is real property and contains one or more family housing units, or a residential condominium unit wherever situated.

(q) **"Finance charge"** means the cost of credit determined in accordance with § 226.4.

(r) **"Open end credit"** means consumer credit extended on an account pursuant to a plan under which (1) the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide; (2) the customer has the privilege of paying the balance in full or in instalments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(s) **"Organization"** means a corporation, trust, estate, partnership, cooperative, association, government, or governmental subdivision, agency, or instrumentality.

(t) **"Period"** means a day, week, month, or other subdivision of a year.

(u) **"Periodic rate"** means a percentage rate of finance charge which, under an open end credit plan, is or may be imposed by a creditor against a balance for a period. (See also § 226.5(a)(3).)

(v) **"Person"** means a natural person or an organization.

(w) **"Real property"** means property which is real property under the law of the State in which it is located.

(x) **"Real property transaction"** means an extension of credit in connection with which a security interest in real property is or will be retained or acquired.

(y) **"Residence"** means any real property in which the customer resides or expects to reside. The term includes a parcel of land on which the customer resides or expects to reside.

(z) **"Security interest"** and **"security"** mean any interest in property which secures payment or performance of an obligation. The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

(aa) **"State"** means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(bb) Unless the context indicates otherwise, "credit" shall be construed to mean "consumer credit," "loan" to mean "consumer loan," and "transaction" to mean "consumer credit transaction."

(cc) A transaction shall be considered consummated at the time a contractual relationship is created between a creditor and a customer irrespective of the time of performance of either party.

(dd) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the intent of any provision of this part may be drawn from them.

SECTION 226.3—EXEMPTED TRANSACTIONS

This Part does not apply to the following:

(a) **Business or governmental credit.** Extensions of credit to organizations, including governments, or for business or commercial purposes, other than agricultural purposes.

(b) **Certain transactions in security or commodities accounts.** Transactions in securities or commodities accounts with a broker-dealer registered with the Securities and Exchange Commission.

(c) **Non-real property credit over $25,000.** Credit transactions, other than real property transactions, in which the amount financed [1] exceeds $25,000, or in which the transaction is pursuant to an express written commitment by the creditor to extend credit in excess of $25,000.

(d) **Certain public utility bills.** Transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities, if the charges for such public utility services, the charges for delayed payment, and any discount allowed for early payment are filed with, reviewed by, or regulated by an agency of the Federal Government, a State, or a political subdivision thereof.

SECTION 226.4—DETERMINATION OF FINANCE CHARGE

(a) **General rule.** Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

(1) Interest, time price differential, and any amount payable under a discount or other system of additional charges.

(2) Service, transaction, activity, or carrying charge.[2]

(3) Loan fee, points, finder's fee, or similar charge.

(4) Fee for an appraisal, investigation, or credit report.

(5) Charges or premiums for credit life, accident, health, or loss of income insurance, written in connection with [3] any credit transaction unless

(i) the insurance coverage is not required by the creditor and this fact is clearly and conspicuously disclosed in writing to the customer; and

(ii) any customer desiring such insurance coverage gives specific dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance.

(6) Charges or premiums for insurance, written in connection with [4] any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, unless a clear, conspicuous, and specific statement in writing is furnished by the creditor to the customer setting forth the cost of the insurance if obtained from or through the creditor and stating that the customer may choose the person through which the insurance is to be obtained.[5]

(7) Premium or other charge for any other guarantee or insurance protecting the creditor against the customer's default or other credit loss.

(8) Any charge imposed by a creditor upon another creditor for purchasing or accepting an obligation of a customer if the customer is required to pay any part of that charge in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(b) **Itemized charges excludable.** If itemized and disclosed to the customer, any charges of the following types need not be included in the finance charge:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

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[1] For this purpose, the amount financed is the amount which is required to be disclosed under § 226.8 (c)(7), or (d)(1), as applicable, or would be so required if the transaction were subject to this Part.

[2] These charges include any charges imposed by the creditor in connection with a checking account to the extent that such charges exceed any charges the customer is required to pay in connection with such an account when it is not being used to extend credit.

[3] A policy of insurance owned by the customer, which is assigned to the creditor or otherwise made payable to the creditor to satisfy a requirement imposed by the creditor, is not insurance "written in connection with" a credit transaction if the policy was not purchased by the customer for the purpose of being used in connection with that extension of credit.

[4] A policy of insurance owned by the customer, which is assigned to the creditor or otherwise made payable to the creditor to satisfy a requirement imposed by the creditor, is not insurance "written in connection with" a credit transaction if the policy was not purchased by the customer for the purpose of being used in connection with that extension of credit.

[5] A creditor's reservation or exercise of the right to refuse to accept an insurer offered by the customer, for reasonable cause, does not require inclusion of the premium in the finance charge.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in subparagraph (1) of this paragraph which would otherwise be payable.

(3) Taxes not included in the cash price.

(4) License, certificate of title, and registration fees imposed by law.

(c) **Late payment, delinquency, default, and reinstatement charges.** A late payment, delinquency, default, reinstatement, or other such charge is not a finance charge if imposed for actual unanticipated late payment, delinquency, default or other such occurrence.

(d) **Overdraft charges.** A charge imposed by a bank for paying checks which overdraw or increase an overdraft in a checking account is not a finance charge unless the payment of such checks and the imposition of such finance charge were previously agreed upon in writing.

(e) **Excludable charges, real property transactions.** The following charges in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this Part, shall not be included in the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes and for required related property surveys.

(2) Fees for preparation of deeds, settlement statements, or other documents.

(3) Amounts required to be placed or paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer, and land rents.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees.

(6) Credit reports.

(f) **Prohibited offsets.** Interest, dividends, or other income received or to be received by the customer on deposits or on investments in real or personal property in which a creditor holds a security interest shall not be deducted from the amount of the finance charge or taken into consideration in computing the annual percentage rate.

(g) **Demand obligations.** Obligations other than those debited to an open end credit account which are payable on demand shall be considered to have a maturity of one-half year for the purpose of computing the amount of the finance charge and the annual percentage rate, except that where such an obligation is alternatively payable upon a stated maturity, the stated maturity shall be used for the purpose of such computations.

(h) **Computation of insurance premiums.** If any insurance premium is required to be included as a part of the finance charge, the amount to be included shall be the premium for coverage extending over the period of time the creditor will require the customer to maintain such insurance. For this purpose, rates and classifications applicable at the time the credit is extended shall be applied over the full time during which coverage is required, unless the creditor knows or has reason to know that other rates or classifications will be applicable, in which case such other rates or classifications shall be used to the extent appropriate.

SECTION 226.5—DETERMINATION OF ANNUAL PERCENTAGE RATE

(a) **General rule—open end credit accounts.** The annual percentage rates for open end credit accounts shall be computed so as to permit disclosure with an accuracy at least to the nearest quarter of 1 per cent. Such rate or rates shall be determined in accordance with § 226.7(a)(4) for purposes of disclosure before opening an account, § 226.10(c)(4) for purposes of advertising, and in the following manner for purposes of disclosure on periodic statements:

(1) Where the finance charge is exclusively the product of the application of one or more periodic rates

(i) by multiplying each periodic rate by the number of periods in a year; or

(ii) at the creditor's option, if the finance charge is the result of the application of two or more periodic rates, by dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) Where the creditor imposes all periodic finance charges in amounts based on specified ranges or brackets of balances, the periodic rate

shall be determined by dividing the amount of the finance charge for the period by the amount of the median balance within the range or bracket of balances to which it is applicable, and the annual percentage rate shall be determined by multiplying that periodic rate (expressed as a percentage) by the number of periods in a year. Such ranges or brackets of balances shall be subject to the limitations prescribed in subdivision (iv) of paragraph (c)(2) of this section.

(3) Where the finance charge is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, and

(i) exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, by dividing the total finance charge for the billing cycle by the amount of the balance to which applicable and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year; or

(ii) does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, by multiplying each applicable periodic rate by the number of periods in a year, irrespective of the imposition of such minimum, fixed, or other charge.

(b) **General rule—other credit.** Except as otherwise provided in this section, the annual percentage rate applicable to any extension of credit, other than open end credit, shall be that nominal annual percentage rate determined as follows:

(1) In accordance with the actuarial method of computation so that it may be disclosed with an accuracy at least to the nearest quarter of 1 per cent. The mathematical equation and technical instructions for determining the annual percentage rate in accordance with the requirements of this paragraph are set forth in Supplement I to Regulation Z which is incorporated in this Part by reference. Supplement I to Regulation Z may be obtained from any Federal Reserve Bank or from the Board in Washington D.C., 20551, upon written request.

(2) At the option of the creditor, by application of the United States Rule so that it may be disclosed with an accuracy at least to the nearest quarter of 1 per cent. Under this rule, the finance charge is computed on the unpaid balance for the actual time the balance remains unpaid and if the amount of a payment is insufficient to pay the accumulated finance charge, the unpaid accumulated finance charge continues to accumulate to be paid from the proceeds of subsequent payments and is not added to the amount financed.

(c) **Charts and tables.** (1) The Regulation Z Annual Percentage Rate Tables produced by the Board may be used to determine the annual percentage rate, and any such rate determined from these tables in accordance with instructions contained therein will comply with the requirements of this section. Volume I contains table FRB—100-M covering 1 to 60 monthly payments, table FRB—200-M covering 61 to 120 monthly payments, table FRB—300-M covering 121 to 480 monthly payments, and table FRB—100-W covering 1 to 104 weekly payments. Volume I also contains instructions for use of the tables in regular transactions and most irregular transactions which involve only odd first and final payments and odd first payment periods. Volume II contains factor tables and instructions for their use in connection with the tables in Volume I in the computation of annual percentage rates in any type of irregular payment or payment period transaction and in transactions involving multiple advances. Each volume is available from the Board in Washington, D.C., 20551, and the Federal Reserve Banks.

(2) Any chart or table other than the Board's Regulation Z Annual Percentage Rate Tables also may be utilized for the purpose of determining the annual percentage rate provided:

(i) It is prepared in accordance with the general rule set forth in paragraph (b) (1) or (2) of this section;

(ii) It bears the name and address of the person responsible for its production, an identification number assigned to it by that person which shall be the same for each chart or table so produced with like numerical content and configuration and, if prepared for use in connection with irregular transactions, an identification of the method of computation ("Actuarial" or "U.S. Rule");

(iii) Except as provided in subdivision (iv) of this subparagraph, it permits determination of the annual percentage rate to the nearest one-quarter of 1 per cent for the range of rates covered by the chart or table; and

(iv) If applicable to ranges or brackets of balances, it discloses the amount of the finance

charge and the annual percentage rate on the median balance within each range or bracket of balances where a creditor imposes the same finance charge for all balances within a specified range or bracket of balances, and provided further that if the annual percentage rate determined on the median balance understates the annual percentage rate determined on the lowest balance in that range or bracket by more than 8 per cent of the rate on the lowest balance, then the annual percentage rate for that range or bracket shall be computed upon any balance lower than the median balance within that range so that any understatement will not exceed 8 per cent of the rate on the lowest balance within that range or bracket of balances.

(3) In the event an error in disclosure of the amount of a finance charge or an annual percentage rate occurs because of a corresponding error in a chart or table acquired or produced in good faith by the creditor, that error in disclosure shall not, in itself, be considered a violation of this Part provided that upon discovery of the error, that creditor makes no further disclosure based on that chart or table and promptly notifies the Board or a Federal Reserve Bank in writing of the error and identifies the inaccurate chart or table by giving the name and address of the person responsible for its production and its identification number.

(d) **Minor irregularities.** In determining the annual percentage rate a creditor may, at his option, consider the payment irregularities set forth in this paragraph as if they were regular in amount or time, as applicable, provided that the transaction to which they relate is otherwise payable in equal instalments scheduled at equal intervals.

(1) If the period from the date on which the finance charge begins to accrue and the date the final payment is due is not less than 3 months in the case of weekly payments, 6 months in the case of biweekly or semimonthly payments, or 1 year in the case of monthly payments, either or both of the following:

(i) The amount of 1 payment other than any downpayment is not more than 50 per cent greater nor 50 per cent less than the amount of a regular payment; or

(ii) The interval between the date on which the finance charge begins to accrue and the date the first payment is due is not less than 5 days for an obligation otherwise payable in weekly instalments, not less than 10 days for an obligation otherwise payable in biweekly or semimonthly instalments, or not less than 20 days for an obligation otherwise payable in monthly instalments.

(2) If the period from the date on which the finance charge begins to accrue and the date the final payment is due is less than 3 months in the case of weekly payments, 6 months in the case of biweekly or semimonthly payments, or 1 year in the case of monthly payments, either or both of the following:

(i) The amount of 1 payment other than any downpayment is not more than 25 per cent greater nor 25 per cent less than the amount of a regular payment; or

(ii) The interval between the date on which the finance charge begins to accrue and the date the first payment is due is not less than 6 days for an obligation otherwise payable in weekly instalments, not less than 12 days for an obligation otherwise payable in biweekly or semimonthly instalments, or not less than 25 days for an obligation otherwise payable in monthly instalments.

(e) **Approximation of annual percentage rate—other credit.** In an exceptional instance when circumstances may leave a creditor with no alternative but to determine an annual percentage rate applicable to an extension of credit other than open end credit by a method other than those prescribed in paragraphs (b) or (c) of this section, the creditor may utilize the constant ratio method of computation provided such use is limited to the exceptional instance and is not for the purpose of circumvention or evasion of the requirements of this Part. Any provision of State law authorizing or requiring the use of the constant ratio method or any method of computing a percentage rate other than those prescribed in paragraphs (b) and (c) of this section does not justify failure of the creditor to comply with the provisions of those paragraphs, as applicable.

SECTION 226.6—GENERAL DISCLOSURE REQUIREMENTS

(a) **Disclosures; general rule.** The disclosures required to be given by this Part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology

prescribed in applicable sections. Where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this Part. Except with respect to the requirements of § 226.10, all numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of 10 point type, .075 inch computer type, or elite size typewritten numerals, or shall be legibly handwritten.

(b) **Inconsistent State requirements.** With respect to disclosures required by this Part, State law is inconsistent with the requirements of the Act and this Part, within the meaning of section 111(a) of the Act, to the extent that it

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

(2) Requires disclosure of the amount of the finance charge determined in any manner other than that prescribed in § 226.4; or

(3) Requires disclosure of the annual percentage rate of the finance charge determined in any manner other than that prescribed in § 226.5.

(c) **Additional information.** At the creditor's option, additional information or explanations may be supplied with any disclosure required by this Part, but none shall be stated, utilized, or placed so as to mislead or confuse the customer or contradict, obscure, or detract attention from the information required by this Part to be disclosed. Any creditor who elects to make disclosures specified in any provision of State law which, under paragraph (b) of this section, is inconsistent with the requirements of the Act and this Part may

(1) Make such inconsistent disclosures on a separate paper apart from the disclosures made pursuant to this Part, or

(2) Make such inconsistent disclosures on the same statement on which disclosures required by this Part are made; provided:

(i) All disclosures required by this Part appear separately and above any other disclosures,

(ii) Disclosures required by this Part are identified by a clear and conspicuous heading indicating that they are made in compliance with Federal law, and

(iii) All inconsistent disclosures appear separately and below a conspicuous demarcation line, and are identified by a clear and conspicuous heading indicating that the statements made thereafter are inconsistent with the disclosure requirements of the Federal Truth in Lending Act.

(d) **Multiple creditors; joint disclosure.** If there is more than one creditor in a transaction, each creditor shall be clearly identified and shall be responsible for making only those disclosures required by this Part which are within his knowledge and the purview of his relationship with the customer. If two or more creditors make a joint disclosure, each creditor shall be clearly identified. The disclosures required under paragraphs (b) and (c) of § 226.8 shall be made by the seller if he extends or arranges for the extension of credit. Otherwise disclosures shall be made as required under paragraphs (b) and (d) of § 226.8.

(e) **Multiple customers; disclosure to one.** In any transaction other than a transaction which may be rescinded under the provisions of § 226.9, if there is more than one customer, the creditor need furnish a statement of disclosures required by this Part to only one of them other than an endorser, comaker, guarantor, or a similar party.

(f) **Unknown information estimate.** If at the time disclosures must be made, an amount or other item of information required to be disclosed, or needed to determine a required disclosure, is unknown or not available to the creditor, and the creditor has made a reasonable effort to ascertain it, the creditor may use an estimated amount or an approximation of the information, provided the estimate or approximation is clearly identified as such, is reasonable, is based on the best information available to the creditor, and is not used for the purpose of circumventing or evading the disclosure requirements of this Part.

(g) **Effect of subsequent occurrence.** If information disclosed in accordance with this Part is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this Part.[8]

[8] Such acts, occurrences, or agreements include the failure of the customer to perform his obligations under the contract and such actions by the creditor as may be proper to protect his interests in such circumstances. Such failure may result in the liability of the customer to pay delinquency charges, collection costs, or expenses of the creditor for perfection or acquisition of any security interest or amounts advanced by the creditor on behalf of the customer in connection with insurance, repairs to or preservation of collateral.

(h) **Overstatement.** The disclosure of the amount of the finance charge or a percentage which is greater than the amount of the finance charge or percentage required to be disclosed under this Part does not in itself constitute a violation of this Part: *Provided,* That the overstatement is not for the purpose of circumvention or evasion of disclosure requirements.

(i) **Preservation and inspection of evidence of compliance.** Evidence of compliance with the requirements imposed under this Part, other than advertising requirements under § 226.10, shall be preserved by the creditor for a period of not less than 2 years after the date each disclosure is required to be made. Each creditor shall, when directed by the appropriate administrative enforcement authority designated in section 108 of the Act, permit that authority or its duly authorized representative to inspect its relevant records and evidence of compliance with this Part.

(j) **Percentage rate as dollars per hundred.** Prior to January 1, 1971, any rate required under this Part to be disclosed as a percentage rate may, at the option of the creditor, be expressed in the form of the corresponding ratio of dollars per hundred dollars using the term "dollars finance charge per year per $100 of unpaid balance." (For example, an add-on finance charge of 4 per cent per year on an obligation payable in 36 equal monthly instalments is equivalent to an annual percentage rate, rounded to the nearest quarter of 1 per cent, of 7.50 per cent which may be stated as "$7.50 finance charge per year per $100 of unpaid balance.")

(k) **Transition period.** Any creditor who can demonstrate that he has taken bona fide steps, prior to July 1, 1969, to obtain printed forms which are necessary to comply with requirements of this Part may, until such forms are received but in no event later than December 31, 1969, utilize existing supplies of printed forms for the purpose of complying with the disclosure requirements of this Part, other than the requirements of paragraph (b) of § 226.9: *Provided,* That such forms are altered or supplemented as necessary to assure that all of the items of information the creditor is required to disclose to the customer are set forth clearly and conspicuously.

SECTION 226.7—OPEN END CREDIT ACCOUNTS—SPECIFIC DISCLOSURES

(a) **Opening new account.** Before the first transaction is made on any open end credit account, the creditor shall disclose to the customer in a single written statement, which the customer may retain, in terminology consistent with the requirements of paragraph (b) of this section, each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including an explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge may be imposed.

(3) The method of determining the amount of the finance charge, including the method of determining any minimum, fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) If the creditor so elects, the Comparative Index of Credit Cost in accordance with § 226.11.

(6) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(7) The conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended on the account, and a description or identification of the type of the interest or interests which may be so retained or acquired.

(8) The minimum periodic payment required.

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

(1) The outstanding balance in the account at the beginning of the billing cycle, using the term "previous balance."

(2) The amount and date of each extension of credit or the date such extension of credit is debited to the account during the billing cycle and, unless previously furnished, a brief identification [7] of any goods or services purchased or other extension of credit.

(3) The amounts credited to the account during the billing cycle for payments, using the term "payments," and for other credits including returns, rebates of finance charges, and adjustments, using the term "credits," and unless previously furnished, a brief identification [8] of each of the items included in such other credits.

(4) The amount of any finance charge, using the term "finance charge," debited to the account during the billing cycle, itemized and identified to show the amounts, if any, due to the application of periodic rates and the amount of any other charge included in the finance charge, such as a minimum, fixed, check service, transaction, activity, or similar charge,[9] using appropriate descriptive terminology.

(5) Each periodic rate, using the term "periodic rate" (or "rates"), that may be used to compute the finance charge (whether or not applied during the billing cycle), and the range of balances to which it is applicable.

(6) The annual percentage rate or rates determined under § 226.5(a), using the term "annual percentage rate" (or "rates"), and, where there is more than one rate, the amount of the balance to which each rate is applicable. Where the creditor of the open end credit account imposes finance charges with respect to specific transactions during the billing cycle, such charges shall be combined with all other finance charges imposed during the billing cycle, and the annual percentage rate to be disclosed shall be determined by:

(i) Dividing the sum of all of the finance charges imposed during the billing cycle by the sum of the balances to which the periodic rates apply (or by the average of daily balances if a daily periodic rate is used), plus the sum of the amounts financed to which the specific transaction charges apply, and

(ii) Multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(7) If the creditor so elects, the Comparative Index of Credit Cost in accordance with § 226.11.

(8) The balance on which the finance charge was computed, and a statement of how that balance was determined. If the balance is determined without first deducting all credits during the billing cycle, that fact and the amount of such credits shall also be disclosed.

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

(c) **Location of disclosures.** The disclosures required by paragraph (b) of this section shall be made on the face of the periodic statement, on its reverse side, or on the periodic statement supplemented by separate statement forms provided they are enclosed together and delivered to the customer at the same time, and further provided that

(1) The disclosure required by paragraph (b)(1) of this section, the amounts or respective totals of the amounts required to be disclosed under paragraph (b)(2), (3), and (4) of this section, and the disclosure required under paragraph (b)(6) and (9) of this section shall appear on the face of the periodic statement. If the amounts and dates of the charges and credits required to be disclosed under paragraph (b)(2) and (3) of this section are not itemized on the face or reverse side of the periodic statement, they shall be disclosed on a separate statement or separate slips which shall accompany the periodic statement and identify each charge and credit and show the date and amount thereof. If the disclosures required under paragraph (b)(4) are not itemized on the face or reverse side of the periodic statement, they shall be disclosed on a separate statement which shall accompany the periodic statement.

(2) The disclosures required by paragraph (b)(5)

[7] Identification may be made on an accompanying slip or by symbol relating to an identification list printed on the statement.

[8] Identification may be made on an accompanying slip or by symbol relating to an identification list printed on the statement.

[9] These charges include any charges imposed by the creditor for the issuance, payment, or handling of checks, for account maintenance or otherwise, to the extent that such charges exceed any similar charges the customer is required to pay when an account is not being used to extend credit.

and (6) of this section and a reference to the amounts required to be disclosed under paragraph (b)(4) and (8) of this section, if not disclosed together on the face or the reverse side of the periodic statement, shall appear together on the face of a single supplemental statement which shall accompany the periodic statement.

(3) The face of the periodic statement shall contain one of the following notices, as applicable: "NOTICE: See reverse side for important information" or "NOTICE: See accompanying statement(s) for important information" or "NOTICE: See reverse side and accompanying statement(s) for important information;" and

(4) The disclosures shall not be separated so as to confuse or mislead the customer or obscure or detract attention from the information required to be disclosed.

(d) **Finance charge imposed at time of transaction.** Any creditor, other than the creditor of the open end credit account, who imposes a finance charge at the time of honoring a customer's credit card, any other device, or form of identification for a purchase of property or services or for a cash advance to be debited to the customer's open end credit account shall make the disclosures required under paragraphs (b)(2) and (d) of § 226.8, *Credit other than open end—specific disclosures*, at the time of that transaction, and the annual percentage rate to be disclosed shall be determined by dividing the amount of the finance charge by the amount financed and multiplying the quotient (expressed as a percentage) by 12. If disclosure is made under this paragraph, the creditor of the open end credit account need make no further disclosure with respect to the finance charge on that transaction.

(e) **Change in terms.** If any change is to be made in terms of an open end credit account plan previously disclosed to the customer, the creditor shall mail or deliver to the customer written disclosure of such proposed change not less than 30 days prior to the effective date of such change or 30 days prior to the beginning of the billing cycle within which such change will become effective, whichever is the earlier date.

(f) **Open end credit accounts existing on July 1, 1969.** In the case of any open end credit account in existence and in which a balance remains unpaid on July 1, 1969, and which balance is deemed to be collectible and not subject to delinquency collection procedures, the items described in paragraph (a) of this section, to the extent applicable, shall be disclosed in a notice mailed or delivered to the customer not later than July 31, 1969. If a customer subsequently utilizes such an account in existence on July 1, 1969, in which no balance remained unpaid on that date, and a notice required by paragraph (a) of this section has not previously been furnished that customer, then such notice shall be mailed or delivered to that customer before or with the next billing or that account.

SECTION 226.8—CREDIT OTHER THAN OPEN END—SPECIFIC DISCLOSURES

(a) **General rule.** Any creditor when extending credit other than open end credit shall, in accordance with § 226.6 and to the extent applicable, make the disclosures required by this section with respect to any transaction consummated on or after July 1, 1969. Except as provided in paragraphs (g) and (h) of this section, such disclosures shall be made before the transaction is consummated. At the time disclosures are made, the creditor shall furnish the customer with a duplicate of the instrument or a statement by which the required disclosures are made and on which the creditor is identified. All of the disclosures shall be made together on either

(1) The note or other instrument evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or

(2) One side of a separate statement which identifies the transaction.

(b) **Disclosures in sale and nonsale credit.** In any transaction subject to this section, the following items, as applicable, shall be disclosed:

(1) The date on which the finance charge begins to accrue if different from the date of the transaction.

(2) The finance charge expressed as an annual percentage rate, using the term "annual percentage rate," except in the case of a finance charge

(i) which does not exceed $5 and is applicable to an amount financed not exceeding $75, or

(ii) which does not exceed $7.50 and is applicable to an amount financed exceeding $75.

A creditor may not divide an extension of credit into two or more transactions to avoid the disclosure of an annual percentage rate, nor may any other percentage rate be disclosed if none

is stated in reliance upon subdivisions (i) or (ii) of this subparagraph.

(3) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness and, except in the case of a loan secured by a first lien or equivalent security interest on a dwelling made to finance the purchase of that dwelling and except in the case of a sale of a dwelling, the sum of such payments using the term, "total of payments."[10] If any payment is more than twice the amount of an otherwise regularly scheduled equal payment, the creditor shall identify the amount of such payment by the term "balloon payment" and shall state the conditions, if any, under which that payment may be refinanced if not paid when due.

(4) The amount, or method of computing the amount, of any default, delinquency, or similar charges payable in the event of late payments.

(5) A description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify. In any such case where a clear identification of such property cannot properly be made on the disclosure statement due to the length of such identification, the note, other instrument evidencing the obligation, or separate disclosure statement shall contain reference to a separate pledge agreement, or a financing statement, mortgage, deed of trust, or similar document evidencing the security interest, a copy of which shall be furnished to the customer by the creditor as promptly as practicable. If after-acquired property will be subject to the security interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired.

(6) A description of any penalty charge that may be imposed by the creditor or his assignee for prepayment of the principal of the obligation (such as a real estate mortgage) with an explanation of the method of computation of such penalty and the conditions under which it may be imposed.

(7) Identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation and a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate of such unearned finance charge that will be credited to the obligation or refunded to the customer.

(c) **Credit sales.** In the case of a credit sale, in addition to the items required to be disclosed under paragraph (b) of this section, the following items, as applicable, shall be disclosed:

(1) The cash price of the property or service purchased, using the term "cash price."

(2) The amount of the downpayment itemized, as applicable, as downpayment in money, using the term "cash downpayment," downpayment in property, using the term "trade-in" and the sum, using the term "total downpayment."

(3) The difference between the amounts described in subparagraphs (1) and (2) of this paragraph, using the term "unpaid balance of cash price."

(4) All other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge.

(5) The sum of the amounts determined under subparagraphs (3) and (4) of this paragraph, using the term "unpaid balance."

(6) Any amounts required to be deducted under paragraph (c) of this section using, as applicable, the terms "prepaid finance charge" and "required deposit balance," and, if both are applicable, the total of such items using the term "total prepaid finance charge and required deposit balance."

(7) The difference between the amounts determined under subparagraphs (5) and (6) of this paragraph, using the term "amount financed."

(8) Except in the case of a sale of a dwelling:

(i) The total amount of the finance charge, with description of each amount included, using the term "finance charge," and

(ii) The sum of the amounts determined under subparagraphs (1), (4), and (8)(i) of this paragraph, using the term "deferred payment price."

(d) **Loans and other nonsale credit.** In the case of a loan or extension of credit which is not a

[10] The disclosures required by this sentence need not be made with respect to interim student loans made pursuant to federally insured student loan programs under Public Law 89-329, Title IV Part B of the Higher Education Act of 1965, as amended.

credit sale, in addition to the items required to be disclosed under paragraph (b) of this section, the following items, as applicable, shall be disclosed:

(1) The amount of credit, excluding items set forth in paragraph (e) of this section, which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge, using the term "amount financed."

(2) Any amount referred to in paragraph (e) of this section required to be excluded from the amount in subparagraph (1) of this paragraph, using, as applicable, the terms "prepaid finance charge" and "required deposit balance," and, if both are applicable, the total of such items using the term, "total prepaid finance charge and required deposit balance."

(3) Except in the case of a loan secured by a first lien or equivalent security interest on a dwelling and made to finance the purchase of that dwelling, the total amount of the finance charge,[11] with description of each amount included, using the term "finance charge."

(e) **Finance charge payable separately or withheld; required deposit balances.** The following amounts shall be disclosed and deducted in a credit sale in accordance with paragraph (c)(6) of this section, and in other extensions of credit shall be excluded from the amount disclosed under paragraph (d)(1) of this section, and shall be disclosed in accordance with paragraph (d)(2) of this section:

(1) Any finance charge paid separately, in cash or otherwise, directly or indirectly to the creditor or with the creditor's knowledge to another person, or withheld by the creditor from the proceeds of the credit extended.[12]

(2) Any deposit balance or any investment which the creditor requires the customer to make, maintain, or increase in a specified amount or proportion as a condition to the extension of credit except:

(i) An escrow account under paragraph (e)(3) of § 226.4,

(ii) A deposit balance which will be wholly applied toward satisfaction of the customer's obligation in the transaction,

(iii) A deposit balance or investment which was in existence prior to the extension of credit and which is offered by the customer as security for that extension of credit, and

(iv) A deposit balance or investment which was acquired or established from the proceeds of an extension of credit made for that purpose upon written request of the customer.

(f) **First lien to finance construction of dwelling.** In any case where a first lien or equivalent security interest in real property is retained or acquired by a creditor in connection with the financing of the initial construction of a dwelling, or in connection with a loan to satisfy that construction loan and provide permanent financing of that dwelling, whether or not the customer previously owned the land on which that dwelling is to be constructed, such security interest shall be considered a first lien against that dwelling to finance the purchase of that dwelling.

(g) **Orders by mail or telephone.** If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or written communication without personal solicitation, the disclosures required under this section may be made any time not later than the date the first payment is due, provided:

(1) In the case of credit sales, the cash price, the downpayment, the finance charge, the deferred payment price, the annual percentage rate, and the number, frequency, and amount of payments are set forth in or are determinable from the creditor's catalog or other printed material distributed to the public; or

(2) In the case of loans or other extensions of credit, the amount of the loan, the finance charge, the total scheduled payments, the number, frequency, and amount of payments, and the annual percentage rate for representative amounts or ranges of credit are set forth in or are determinable from the creditor's printed material distributed to the public, in the contract of loan, or in other printed material delivered or made available to the customer.

(h) **Series of sales.** If a credit sale is one of a series of transactions made pursuant to an agree-

[11] The disclosure required by this subparagraph need not be made with respect to interim student loans made pursuant to federally insured student loan programs under Public Law 89-329, Title IV Part B of the Higher Education Act of 1965, as amended.

[12] Finance charges deducted or excluded as provided by this paragraph shall, nevertheless, be included in determining the finance charge under § 226.4.

ment providing for the addition of the amount financed plus the finance charge for the current sale to an existing outstanding balance, then the disclosures required under this section for the current sale may be made at any time not later than the date the first payment for that sale is due, provided:

(1) The customer has approved in writing both the annual percentage rate or rates and the method of treating any unearned finance charge on an existing outstanding balance in computing the finance charge or charges; and

(2) The creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sale price including any finance charges attributable thereto. For the purposes of this subparagraph, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

(i) **Advances under loan commitments.** If a loan is one of a series of advances made pursuant to a written agreement under which a creditor is or may be committed to extend credit to a customer up to a specified amount, and the customer has approved in writing the annual percentage rate or rates, the method of computing the finance charge or charges, and any other terms, the agreement shall be considered a single transaction, and the disclosures required under this section at the creditor's option need be made only at the time the agreement is executed.

(j) **Refinancing, consolidating, or increasing.** If any existing extension of credit is refinanced, or two or more existing extensions of credit are consolidated, or an existing obligation is increased, such transaction shall be considered a new transaction subject to the disclosure requirements of this Part. For the purpose of such disclosure, any unearned portion of the finance charge which is not credited to the existing obligation shall be added to the new finance charge and shall not be included in the new amount financed. Any increase in an existing obligation to reimburse the creditor for undertaking the customer's obligation in perfecting, protecting or preserving the security shall not be considered a new transaction subject to this Part. Any advance for agricultural purposes made under an open end real estate mortgage or similar lien shall not be considered a new transaction subject to the disclosure requirements of this section, provided:

(1) The maturity of the advance does not exceed 2 years;

(2) No increase is made in the annual percentage rate previously disclosed; and

(3) All disclosures required by this Part were made at the time the security interest was acquired by the creditor or at any time prior to the first advance made on or following the effective date of this part.

(k) **Assumption of an obligation.** Any creditor who accepts a subsequent customer as an obligor under an existing obligation shall make the disclosures required by this part to that customer before he becomes so obligated. If the obligation so assumed is secured by a first lien or equivalent security interest on a dwelling, and the assumption is made for the subsequent customer to acquire that dwelling, that obligation shall be considered a loan made to finance the purchase of that dwelling.

(l) **Deferrals or extensions.** In the case of an obligation other than an obligation upon which the amount of the finance charge is determined by the application of a percentage rate to the unpaid balance, if the creditor imposes a charge or fee for deferral or extension, the creditor shall disclose to the customer

(1) The amount deferred or extended;

(2) The date to which, or the time period for which payment is deferred or extended; and

(3) The amount of the charge or fee for the deferral or extension.

(m) **Series of single payment obligations.** Any extension of credit involving a series of single payment obligations shall be considered a single transaction subject to the disclosure requirements of this Part.

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

[13] Any statement, notice, or reminder of payment due on any transaction payable in instalments which is mailed or delivered periodically to the customer in advance of the due date of the instalment shall be a periodic billing statement for the purpose of this paragraph.

(1) The annual percentage rate or rates; and

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

*(o) **Discount for prompt payment of sales transactions.** (1) For the purposes of this paragraph, a "transaction subject to § 226.8(o)" is a credit sale transaction which is not exempt under § 226.3 and which is subject to a discount for payment on or before a specified date (e.g. 2% discount if paid within 10 days) or to a charge for delaying payment after a specified date (e.g. $98 cash, $100 if paid in 30 days). Both such a discount and such a charge are referred to in this paragraph as a "discount." In the case of any transaction subject to § 226.8(o), notwithstanding the provisions of the last sentence of paragraph (a) of this section, the creditor shall disclose on the invoice or other evidence of such sale, as applicable:

(i) The date of the sale or invoice.

(ii) The rate of discount, the date by which or period within which the discount may be taken, and the date by which or period within which the full amount of the obligation is due and payable. (For example, "2%/10 days, net 30 days"; or "$1 per ton/10 days, net 30 days.")

(iii) The information required under § 226.8 (b)(4) and (5).

(iv) The amount of the discount, designated as a "finance charge," using that term.

(v) If the discount shown for prompt payment exceeds 5% of the obligation to which the discount relates, the "annual percentage rate," using that term, computed in accordance with subparagraph (2) of this paragraph, but subject to the exceptions provided under § 226.8 (b)(2).

(2) For the purposes of subparagraph (1)(v) of this paragraph, the annual percentage rate shall be determined by dividing the amount of the finance charge by the least amount payable in satisfaction of the obligation and multiplying the (quotient expressed as a percentage) by a fraction in which the numerator is 12, and the denominator is the number of whole months (but not less than 1) between the first day of the monthly billing cycle in which the transaction is consummated and the first day of the monthly billing cycle in which the obligation becomes due.[18a]

(3) In a transaction with multiple discount rates (for example 6%/10 days, 4%/20 days, net 30 days), the largest discount shall be used for purposes of disclosing the amount of the finance charge under subparagraph (1)(iv) of this paragraph and the annual percentage rate under subparagraph (1)(v) of this paragraph.[18b]

(4) In order to determine the applicability of subparagraph (1)(v) of this paragraph and to facilitate disclosure of an annual percentage rate, if the amount of the discount for prompt payment is related, pursuant to usual business practice, to weight, quantity, or other physical measure (e.g. $1 per ton or 1¢ per gallon) rather than expressed as a percentage of discount, that discount may be converted to an approximate discount rate and, under subparagraph (2) of this paragraph, a reasonably accurate approximation of the annual percentage rate by using approximate or projected prices per physical unit determined on the basis of past experience, current information, or projected analysis.[18c]

(5) If by its terms a transaction subject to § 226.8(o) is payable in a single payment and no finance charge other than a discount is or may be imposed, and such discount is not utilized for the purpose of circumvention or evasion of disclosure requirements, the disclosure required by subparagraph (1) of this paragraph shall constitute compliance with the requirements of § 226.8 and under § 226.9(a) shall constitute "all other material disclosures required under this Part."

(6) If a transaction subject to § 226.8(o) is debited to an open end credit account, disclosures shall be made as specified in subparagraph (1) of

* Amended in its present form August 11, 1969

[18a] For example, a $1,000 purchase of feed subject to terms of 6%/10 days, net 30 days (or 6%/10 days, net E.O.M.; or 6%/10 days, net 10th of the following month; or 6%/20 days, net 30 days; or 6%/30 days, net 30 days; or 6% discount for cash, net 30 days) results in a finance charge of $60, a least amount payable of $940, and an annual percentage rate of 76.56%, which may be rounded to 76.50% or 76½%. Terms of 6%/20 days, net September 29 applied to an April purchase, assuming a calendar month billing cycle, result in an annual percentage rate of 15.31% (i.e. 6/94 x 12/5) which may be rounded to 15.25% or 15¼%. In this example the 29 days in September are ignored and the denominator (5) is determined by the number of whole months in the period.

[18b] For example, terms of 6%/10 days, 4%/20 days, net 30 days would be treated like terms of 6%/10 days, net 30 days, which would represent an annual percentage rate of 76½%.

[18c] For example, if terms of $3 discount per ton/10 days, net 30 days are offered on fertilizer that is expected to sell in a range of about $48 to $52 per ton, the annual percentage rate could be approximated for preprinting as if it were 6% (i.e. $3 on $50)/10 days, net 30 days, that is, 76½%.

this paragraph and also as specified in § 226.7. The full amount of the obligation including the amount of the discount may be debited to the open end credit account, under § 226.7(b)(2), and the amount of any finance charge representing the discount need not be added to any other finance charge for the purpose of computing and disclosing the total amount of finance charge and the annual percentage rate under § 226.5(a) and § 226.7.[18d]

(7) If a transaction subject to § 226.8(o) is not debited to an open end credit account, but either is subject to an additional finance charge or is payable by its terms in more than one payment, disclosures shall be made as specified in subparagraph (1) of this paragraph and also as specified in paragraphs (b) and (c) of this section. In such a case, if the transaction is payable in more than one payment, the amount of the discount shall be deducted for the purpose of computing and disclosing the cash price under paragraph (c)(1) of this section and shall be added to any other finance charge for the purpose of computing and disclosing the amount of the finance charge under paragraph (c)(8)(i) of this section and the annual percentage rate under paragraph (b)(2) of this section.[18e] If the transaction is payable in a single payment, the discount may be disregarded in computing and disclosing such cash price, finance charge, and annual percentage rate.[18f]

(8) Notwithstanding the provisions of the second sentence of paragraph (a) of this section, the disclosures required under subparagraph (1) of this paragraph made on the invoice or other evidence of sale may be delivered subsequent to consummation of the transaction.

(9) Amended paragraph (o) of § 226.8 shall become effective August 11, 1969, but until March 1, 1970, any creditor may at his option use any printed forms which were prepared before such effective date in accordance with paragraph (o) of § 226.8 in effect at the time of such preparation.

[18d] For example, if a $1,000 sale on terms of 2%/10 days, net 30 days, is debited to an open end account on which 1% per month is charged, the periodic statement under § 226.7(b) (assuming no other transactions in the account) would show a previous balance of $1,000, a finance charge of $10, and an annual percentage rate of 12%.

[18e] For example, if a $1,000 sale on terms of 2%/10 days, net 30 days is subject to an add-on finance charge of $100 and is payable in instalments, the disclosures under § 226.8(b) and (c) would include a cash price of $980 and a finance charge of $120.

[18f] For example, if a $1,000 sale on August 2 not under an open end account is subject to terms of 2%/10 days, net 30 days, thereafter 8% per annum until December 1, the disclosures under § 226.8(b) and (c) would include a cash price of $1,000, a finance charge of $19.95, and an annual percentage rate of 8.00%.

SECTION 226.9—RIGHT TO RESCIND CERTAIN TRANSACTIONS

(a) **General rule.** Except as otherwise provided in this section, in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, the customer shall have the right to rescind that transaction until midnight of the third business day [19] following the date of consummation of that transaction or the date of delivery of the disclosures required under this section and all other material disclosures required under this Part, whichever is later, by notifying the creditor by mail, telegram, or other writing of his intention to do so. Notification by mail shall be considered given at the time mailed; notification by telegram shall be considered given at the time filed for transmission; and notification by other writing shall be considered given at the time delivered to the creditor's designated place of business.

(b) **Notice of opportunity to rescind.** Whenever a customer has the right to rescind a transaction under paragraph (a) of this section, the creditor shall give notice of that fact to the customer by furnishing the customer with two copies of the notice set out below, one of which may be used by the customer to cancel the transaction. Such notice shall be printed in capital and lower case letters of not less than 12 point bold-faced type on one side of a separate statement which identifies the transaction to which it relates. Such statement shall also set forth the entire paragraph (d) of this section, "Effect of rescission." If such paragraph appears on the reverse side of the statement, the face of the statement shall state: "See reverse side for important information about your right of rescission." Before furnishing copies of the notice to the customer, the creditor shall complete both copies with the name of the creditor, the address of the creditor's place of business, the

[19] For the purposes of this section, a business day is any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving, and Christmas.

date of consummation of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the customer may give notice of cancellation.

Notice to customer required by Federal law:

You have entered into a transaction on (date) **which may result in a lien, mortgage, or other security interest on your home. You have a legal right under Federal law to cancel this transaction, if you desire to do so, without any penalty or obligation within three business days from the above date or any later date on which all material disclosures required under the Truth in Lending Act have been given to you. If you so cancel the transaction, any lien, mortgage, or other security interest on your home arising from this transaction is automatically void. You are also entitled to receive a refund of any downpayment or other consideration if you cancel. If you decide to cancel this transaction, you may do so by notifying**

(Name of creditor)

at (Address of creditor's place of business) **by mail or telegram sent not later than midnight of** (date) **. You may also use any other form of written notice identifying the transaction if it is delivered to the above address not later than that time. This notice may be used for that purpose by dating and signing below.**

I hereby cancel this transaction.

(date) (customer's signature)

(c) **Delay of performance.** Except as provided in paragraph (e) of this section, the creditor in any transaction subject to this section shall not perform, or cause or permit the performance of, any of the following actions until after the rescission period has expired and he has reasonably satisfied himself that the customer has not exercised his right of rescission:

(1) Disburse any money other than in escrow;

(2) Make any physical changes in the property of the customer;

(3) Perform any work or service for the customer; or

(4) Make any deliveries to the residence of the customer if the creditor has retained or will acquire a security interest other than one arising by operation of law.

(d) **Effect of rescission.** When a customer exercises his right to rescind under paragraph (a) of this section, he is not liable for any finance or other charge, and any security interest becomes void upon such a rescission. Within 10 days after receipt of a notice of rescission, the creditor shall return to the customer any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the customer, the customer may retain possession of it. Upon the performance of the creditor's obligations under this section, the customer shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the customer shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the customer, at the option of the customer. If the creditor does not take possession of the property within 10 days after tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it.

(e) **Waiver of right of rescission.** A customer may modify or waive his right to rescind a transaction subject to the provisions of this section provided:

(1) The extension of credit is needed in order to meet a bona fide immediate personal financial emergency of the customer;

(2) The customer has determined that a delay of 3 business days in performance of the creditor's obligation under the transaction will jeopardize the welfare, health or safety of natural persons or endanger property which the customer owns or for which he is responsible; and

(3) The customer furnishes the creditor with a separate dated and signed personal statement describing the situation requiring immediate remedy and modifying or waiving his right of rescission. The use of printed forms for this purpose is prohibited.

(f) **Joint ownership.** For the purpose of this

section, "customer" shall include two or more customers where joint ownership is involved, and the following shall apply:

(1) The right of rescission of the transaction may be exercised by any one of them, in which case the effect of rescission in accordance with paragraph (d) of this section applies to all of them; and

(2) Any waiver of the right of rescission provided in paragraph (e) of this section is invalid unless signed by all of them.

(g) **Exceptions to general rule.** This section does not apply to:

(1) The creation, retention, or assumption of a first lien or equivalent security interest to finance the acquisition of a dwelling in which the customer resides or expects to reside.

(2) A security interest which is a first lien retained or acquired by a creditor in connection with the financing of the initial construction of the residence of the customer, or in connection with a loan committed prior to completion of the construction of that residence to satisfy that construction loan and provide permanent financing of that residence, whether or not the customer previously owned the land on which that residence is to be constructed.

(3) Any lien by reason of its subordination at any time subsequent to its creation, if that lien was exempt from the provisions of this section when it was originally created.

(4) Any advance for agricultural purposes made pursuant to paragraph (j) of § 226.8 under an open end real estate mortgage or similar lien, provided the disclosure required under paragraph (b) of this section was made at the time the security interest was acquired by the creditor or at any time prior to the first advance made on or following the effective date of this Part.

SECTION 226.10—ADVERTISING CREDIT TERMS

(a) **General rule.** No advertisement to aid, promote, or assist directly or indirectly any extension of credit may state

(1) That a specific amount of credit or instalment amount can be arranged unless the creditor usually and customarily arranges or will arrange credit amounts or instalments for that period and in that amount; or

(2) That no downpayment or that a specified downpayment will be accepted in connection with any extension of credit, unless the creditor usually and customarily accepts or will accept downpayments in that amount.

(b) **Catalogs and multi-page advertisements.** If a catalog or other multiple-page advertisement sets forth or gives information in sufficient detail to permit determination of the disclosures required by this section in a table or schedule of credit terms, such catalog or multiple-page advertisement shall be considered a single advertisement provided:

(1) The table or schedule and the disclosures made therein are set forth clearly and conspicuously, and

(2) Any statement of credit terms appearing in any place other than in that table or schedule of credit terms clearly and conspicuously refers to the page or pages on which that table or schedule appears, unless that statement discloses all of the credit terms required to be stated under this section. For the purpose of this subparagraph, cash price is not a credit term.

(c) **Advertising of open end credit.** No advertisement to aid, promote, or assist directly or indirectly the extension of open end credit may set forth any of the terms described in paragraph (a) of § 226.7, the Comparative Index of Credit Cost, or that no downpayment, a specified downpayment, or a specified periodic payment is required or any of the following items unless it also clearly and conspicuously sets forth all the following items in terminology prescribed under paragraph (b) of §226.7.:

(1) An explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge may be imposed.

(3) The method of determining the amount of the finance charge, including the determination of any minimum, fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(6) The minimum periodic payment required.

(d) **Advertising of credit other than open end.** No advertisement to aid, promote, or assist directly or indirectly any credit sale including the sale of residential real estate, loan, or other extension of credit, other than open end credit, subject to the provisions of this Part, shall state

(1) The rate of a finance charge unless it states the rate of that charge expressed as an "annual percentage rate," using that term;

(2) The amount of the downpayment required or that no downpayment is required, the amount of any instalment payment, the dollar amount of any finance charge, the number of instalments or the period of repayment, or that there is no charge for credit, unless it states all of the following items in terminology prescribed under § 226.8:

(i) the cash price or the amount of the loan, as applicable.

(ii) the amount of the downpayment required or that no downpayment is required as applicable.

(iii) the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

(iv) the amount of the finance charge expressed as an annual percentage rate. The exemptions from disclosure of an annual percentage rate permitted in paragraph (b)(2) of § 226.8 shall not apply to this subdivision.

(v) Except in the case of the sale of a dwelling or a loan secured by a first lien on a dwelling to purchase that dwelling, the deferred payment price or the sum of the payments, as applicable.

SECTION 226.11—COMPARATIVE INDEX OF CREDIT COST FOR OPEN END CREDIT

(a) **General rule.** Any creditor who elects to disclose the Comparative Index of Credit Cost on open end credit accounts

(1) Shall compute the Comparative Index of Credit Cost in accordance with paragraph (b) of this section.

(2) Shall recompute the Comparative Index of Credit Cost in accordance with paragraph (b) of this section based upon any new open end credit account terms to be adopted and shall disclose the new Comparative Index of Credit Cost in accordance with paragraph (c)(2) of this section concurrently with the notice required under paragraph (e) of § 226.7.

(3) Shall, when making such disclosure under the provisions of subparagraphs (a)(5) and (b)(7) of § 226.7, make the disclosure to all open end credit account customers; and

(4) Shall not utilize such disclosure so as to mislead, or confuse the customer or contradict, obscure, or detract attention from the required disclosures.

(b) **Computation of Comparative Index of Credit Cost.** The Comparative Index of Credit Cost for each open end credit plan shall be computed by applying the creditor's terms of that plan to the following hypothetical factors:

(1) A single transaction in the amount of $100 is debited on the first day of a billing cycle to an open end credit account having no previous balance.

(2) The creditor imposes all finance charges including periodic, fixed, minimum or other charges applicable to such account in amounts and on dates consistent with his policy of imposing such charges upon open end credit accounts.

(3) The exact amount of the required minimum periodic payment is paid on the last day of each subsequent and successive billing cycle until the amount of the single transaction, together with applicable finance charges, is paid in full.

(4) The Comparative Index of Credit Cost shall be expressed and disclosed as a percentage accurate to the nearest quarter of 1 per cent and shall be determined by dividing the total amount of the finance charges imposed by the sum of the daily balances and multiplying the quotient so obtained (expressed as a percentage) by 365.

(c) **Form of disclosure.** Any creditor who elects to disclose the Comparative Index of Credit Cost shall:

(1) Make the disclosure in the form of the following statement: "Our Comparative Index of Credit Cost under the terms of our open end credit account plan is ___% per year, computed on the basis of a single transaction of $100 debited on the first day of a billing cycle to an account having no previous balance, and paid in required minimum consecutive instalments on the last day

of each succeeding billing cycle until the transaction and all finance charges are paid in full. The actual percentage cost of credit on your account may be higher or lower depending on the dates and amounts of charges and payments."

(2) Disclose any newly computed Comparative Index of Credit Cost in the form of the statement prescribed in subparagraph (1) of this paragraph, except that the statement shall be preceded by the words "Effective as of (date) ," and the words "will be" shall be substituted for the word "is" in the second line of the statement.

SECTION 226.12—EXEMPTION OF CERTAIN STATE REGULATED TRANSACTIONS

(a) **Exemption for State regulated transactions.** In accordance with the provisions of Supplement II to Regulation Z (§ 226.12—Supplement), any State may make application to the Board for exemption of any class of transactions within that State from the requirements of Chapter 2 of the Act and the corresponding provisions of this Part: *Provided*, That

(1) Under the law of that State, that class of transactions is subject to requirements substantially similar to those imposed under Chapter 2 of the Act and the corresponding provisions of this Part; and

(2) There is adequate provision for enforcement.

(b) **Procedures and criteria.** On or before July 1, 1969, the Board will promulgate and publish Supplement II to Regulation Z (§ 262.12—Supplement) in which will be set forth, as established by the Board, the procedures and criteria under which any State may apply for the determination provided for in paragraph (a) of this section. Upon publication of Supplement II of Regulation Z application may be made to the Board for such determination.

(j) The term "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(k) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Board under this title or the provision thereof in question.

(l) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this title does not in itself constitute a violation of this title.

§ 104. Exempted transactions

This title does not apply to the following:

(1) Credit transactions involving extensions of credit for business or commercial purposes, or to government or governmental agencies or instrumentalities, or to organizations.

(2) Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.

(3) Credit transactions, other than real property transactions, in which the total amount to be financed exceeds $25,000.

(4) Transactions under public utility tariffs, if the Board determines that a State regulatory body regulates the charges for the public utility services involved, the charges for delayed payment, and any discount allowed for early payment.

§ 105. Regulations

The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

§ 106. Determination of finance charge

(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:

(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

(b) Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charge unless

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(c) Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

(d) If any of the following items is itemized and disclosed in accordance with the regulations of the Board in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

(2) The premium payable for any insur-

STATUTORY APPENDIX

Titles I and V of Act of May 29, 1968

§ 1. Short title of entire Act

This Act may be cited as the Consumer Credit Protection Act.

TITLE I—CONSUMER CREDIT COST DISCLOSURE

CHAPTER 1—GENERAL PROVISIONS

§ 101. Short title

This title may be cited as the Truth in Lending Act.

§ 102. Findings and declaration of purpose

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.

§ 103. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(c) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(d) The term "person" means a natural person or an organization.

(e) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) The term "creditor" refers only to creditors who regularly extend, or arrange for the extension of, credit for which the payment of a finance charge is required, whether in connection with loans, sales of property or services, or otherwise. The provisions of this title apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.

(g) The term "credit sale" refers to any sale with respect to which credit is extended or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(h) The adjective "consumer", used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, household, or agricultural purposes.

(i) The term "open end credit plan" refers to a plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

ance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph (1) which would otherwise be payable.

(3) Taxes.

(4) Any other type of charge which is not for credit and the exclusion of which from the finance charge is approved by the Board by regulation.

(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, title insurance, or similar purposes.

(2) Fees for preparation of a deed, settlement statement, or other documents.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees.

(6) Credit reports.

§ 107. Determination of annual percentage rate

(a) The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Board,

(1) in the case of any extension of credit other than under an open end credit plan, as

(A) that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(B) the rate determined by any method prescribed by the Board as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (A).

(2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

(b) Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the Board determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the Board may by regulation require.

(c) The annual percentage rate may be rounded to the nearest quarter of 1 per centum for credit transactions payable in substantially equal installments when a creditor determines the total finance charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by the Board.

(d) The Board may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection (a)(1)(A) by not more than such tolerances as the Board may allow. The Board may not allow a tolerance greater than 8 per centum of that rate except to simplify compliance where irregular payments are involved.

(e) In the case of creditors determining the annual percentage rate in a manner other than as described in subsection (c) or (d), the Board may authorize other reasonable tolerances.

(f) Prior to January 1, 1971, any rate required under this title to be disclosed as a percentage rate may, at the option of the creditor, be expressed in the form of the corresponding ratio of dollars per hundred dollars.

§ 108. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under

(1) section 8 of the Federal Deposit Insurance Act, in the case of

(A) national banks, by the Comptroller of the Currency.

(B) member banks of the Federal Re-

serve System (other than national banks), by the Board.

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) the Federal Credit Union Act, by the Director of the Bureau of Federal Credit Unions with respect to any Federal credit union.

(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts.

(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(d) The authority of the Board to issue regulations under this title does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this title.

§ 109. Views of other agencies

In the exercise of its functions under this title, the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of creditors subject to this title.

§ 110. Advisory committee

The Board shall establish an advisory committee to advise and consult with it in the exercise of its functions under this title. In appointing the members of the committee, the Board shall seek to achieve a fair representation of the interests of sellers of merchandise on credit, lenders, and the public. The committee shall meet from time to time at the call of the Board, and members thereof shall be paid transportation expenses and not to exceed $100 per diem.

§ 111. Effect on other laws

(a) This title does not annul, alter, or affect, or exempt any creditor from complying with, the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this title or regulations thereunder, and then only to the extent of the inconsistency.

(b) This title does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this

title extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply.

(c) In any action or proceeding in any court involving a consumer credit sale, the disclosure of the annual percentage rate as required under this title in connection with that sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.

(d) Except as specified in sections 125 and 130, this title and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under State or Federal law.

§ 112. Criminal liability for willful and knowing violation

Whoever willfully and knowingly

(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this title or any regulation issued thereunder,

(2) uses any chart or table authorized by the Board under section 107 in such a manner as to consistently understate the annual percentage rate determined under section 107 (a)(1)(A), or

(3) otherwise fails to comply with any requirement imposed under this title,

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

§ 113. Penalties inapplicable to governmental agencies

No civil or criminal penalty provided under this title for any violation thereof may be imposed upon the United States or any agency thereof, or upon any State or political subdivision thereof, or any agency of any State or political subdivision.

§ 114. Reports by Board and Attorney General

Not later than January 3 of each year after 1969, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this title, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements imposed under this title is being achieved.

[U.S.C., title 15, sec. 1601-1613.]

CHAPTER 2—CREDIT TRANSACTIONS

Sec.

§ 121. General requirement of disclosure

(a) Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed, the information required under this chapter.

(b) If there is more than one obligor, a creditor need not furnish a statement of information required under this chapter to more than one of them.

§ 122. Form of disclosure; additional information

(a) Regulations of the Board need not require that disclosures pursuant to this chapter be made in the order set forth in this chapter, and may permit the use of terminology different from that employed in this chapter if it conveys substantially the same meaning.

(b) Any creditor may supply additional information or explanations with any disclosures required under this chapter.

§ 123. Exemption for State-regulated transactions

The Board shall by regulation exempt from the requirements of this chapter any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter, and that there is adequate provision for enforcement.

§ 124. Effect of subsequent occurrence

If information disclosed in accordance with this chapter is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter.

§ 125. Right of rescission as to certain transactions

(a) Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this chapter, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

(b) When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor becomes void upon such a rescission. Within ten days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within ten days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it.

(c) Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this title by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) The Board may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling.

§ 126. Content of periodic statements

If a creditor transmits periodic statements in connection with any extension of consumer credit other than under an open end consumer credit plan, then each of those statements shall set forth each of the following items:

(1) The annual percentage rate of the total finance charge.

(2) The date by which, or the period (if any) within which, payment must be made in order to avoid additional finance charges or other charges.

(3) Such of the items set forth in section 127(b) as the Board may by regulation require as appropriate to the terms and conditions under which the extension of credit in question is made.

§ 127. Open end consumer credit plans

(a) Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including the time period, if any, within which any credit extended may be repaid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) If the creditor so elects,

(A) the average effective annual percentage rate of return received from accounts under the plan for a representative period of time; or

(B) whenever circumstances are such that the computation of a rate under subparagraph (A) would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from accounts under the plan.

The Board shall prescribe regulations, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph.

(6) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(7) The conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended under the plan, and a description of the interest or interests which may be so retained or acquired.

(b) The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the statement period.

(2) The amount and date of each extension of credit during the period, and, if a purchase was involved, a brief identification (unless previously furnished) of the goods or services purchased.

(3) The total amount credited to the account during the period.

(4) The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge.

(5) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage rate (determined under section 107(a)(2)) is required to be disclosed pursuant to paragraph (6), the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(6) Where the total finance charge exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate (determined under section 107(a)(2)), except that if the finance charge is the sum of two or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable.

(7) At the election of the creditor, the average effective annual percentage rate of return (or the projected rate) under the plan as prescribed in subsection (a)(5).

(8) The balance on which the finance charge was computed and a statement of how the balance was determined. If the balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed.

(9) The outstanding balance in the account at the end of the period.

(10) The date by which, or the period (if any) within which, payment must be made to avoid additional finance charges.

(c) In the case of any open end consumer credit plan in existence on the effective date of this subsection, the items described in subsection (a), to the extent applicable, shall be disclosed in a notice mailed or delivered to the obligor not later than thirty days after that date.

§ 128. Sales not under open end credit plans

(a) In connection with each consumer credit sale not under an open end credit plan, the creditor shall disclose each of the following items which is applicable:

(1) The cash price of the property or service purchased.

(2) The sum of any amounts credited as downpayment (including any trade-in).

(3) The difference between the amount re-

ferred to in paragraph (1) and the amount referred to in paragraph (2).

(4) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.

(5) The total amount to be financed (the sum of the amount described in paragraph (3) plus the amount described in paragraph (4)).

(6) Except in the case of a sale of a dwelling, the amount of the finance charge, which may in whole or in part be designated as a time-price differential or any similar term to the extent applicable.

(7) The finance charge expressed as an annual percentage rate except in the case of a finance charge

(A) which does not exceed $5 and is applicable to an amount financed not exceeding $75, or

(B) which does not exceed $7.50 and is applicable to an amount financed exceeding $75.

A creditor may not divide a consumer credit sale into two or more sales to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

(8) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness.

(9) The default, delinquency, or similar charges payable in the event of late payments.

(10) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(b) Except as otherwise provided in this chapter, the disclosures required under subsection (a) shall be made before the credit is extended, and may be made by disclosing the information in the contract or other evidence of indebtedness to be signed by the purchaser.

(c) If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the deferred payment price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection (a) may be made at any time not later than the date the first payment is due.

(d) If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the deferred payment price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection (a) for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for.

§ 129. Consumer loans not under open end credit plans

(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable:

(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.

(2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.

(3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)).

(4) Except in the case of a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling, the amount of the finance charge.

(5) The finance charge expressed as an annual percentage rate except in the case of a finance charge

(A) which does not exceed $5 and is applicable to an extension of consumer

credit not exceeding $75, or

(B) which does not exceed $7.50 and is applicable to an extension of consumer credit exceeding $75.

A creditor may not divide an extension of credit into two or more transactions to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

(6) The number, amount, and the due dates or periods of payments scheduled to repay the indebtedness.

(7) The default, delinquency, or similar charges payable in the event of late payments.

(8) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(b) Except as otherwise provided in this chapter, the disclosures required by subsection (a) shall be made before the credit is extended, and may be made by disclosing the information in the note or other evidence of indebtedness to be signed by the obligor.

(c) If a creditor receives a request for an extension of credit by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, then the disclosures required under subsection (a) may be made at any time not later than the date the first payment is due.

§ 130. Civil liability

(a) Except as otherwise provided in this section, any creditor who fails in connection with any consumer credit transaction to disclose to any person any information required under this chapter to be disclosed to that person is liable to that person in an amount equal to the sum of

(1) twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall not be less than $100 nor greater than $1,000; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.

(b) A creditor has no liability under this section if within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed.

(c) A creditor may not be held liable in any action brought under this section for a violation of this chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in real property may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this chapter, and that it maintained procedures reasonably adapted to apprise it of the existence of any such violations.

(e) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

§ 131. Written acknowledgment as proof of receipt

Except as provided in section 125(c) and except in the case of actions brought under section 130(d), in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgment of receipt by a person to whom a statement is required to be given pursuant to this title shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement, of compliance with this chapter. This section does not affect the rights of the obligor in any action against the original creditor.

[U.S.C., title 15, sec. 1631-1641.]

CHAPTER 3—CREDIT ADVERTISING

Sec.
141. Catalogs and multiple-page advertisements.
142. Advertising of downpayments and installments.
143. Advertising of open end credit plans.
144. Advertising of credit other than open end plans.
145. Nonliability of media.

§ 141. Catalogs and multiple-page advertisements

For the purposes of this chapter, a catalog or other multiple-page advertisement shall be considerd a single advertisement if it clearly and conspicuously displays a credit terms table on which the information required to be stated under this chapter is clearly set forth.

§ 142. Advertising of downpayments and installments

No advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit may state

(1) that a specific periodic consumer credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount.

(2) that a specified downpayment is required in connection with any extension of consumer credit, unless the creditor usually and customarily arranges downpayments in that amount.

§ 143. Advertising of open end credit plans

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open end credit plan may set forth any of the specific terms of that plan or the appropriate rate determined under section 127(a)(5) unless it also clearly and conspicuously sets forth all of the following items:

(1) The time period, if any, within which any credit extended may be repaid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(5) Such other or additional information for the advertising of open end credit plans as the Board may by regulation require to provide for adequate comparison of credit costs as between different types of open end credit plans.

§ 144. Advertising of credit other than open end plans

(a) Except as provided in subsection (b), this section applies to any advertisement to aid, promote, or assist directly or indirectly any consumer credit sale, loan, or other extension of credit subject to the provisions of this title, other than an open end credit plan.

(b) The provisions of this section do not apply to advertisements of residential real estate except to the extent that the Board may by regulation require.

(c) If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

(d) If any advertisement to which this section applies states the amount of the downpayment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

(1) The cash price or the amount of the loan as applicable.

(2) The downpayment, if any.

(3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

(4) The rate of the finance charge expressed as an annual percentage rate.

§ 145. Nonliability of media

There is no liability under this chapter on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

[U.S.C., title 15, sec. 1661-1665.]

* * *

TITLE V—GENERAL PROVISIONS

Sec.
501. Severability.
502. Captions and catchlines for reference only.
503. Grammatical usages.
504. Effective dates.

§ 501. Severability

If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in one more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.

§ 502. Captions and catchlines for reference only

Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the legislative intent with respect to any provision enacted by this Act may be drawn from them.

§ 503. Grammatical usages

In this Act:

(1) The word "may" is used to indicate that an action either is authorized or is permitted.

(2) The word "shall" is used to indicate that an action is both authorized and required.

(3) The phrase "may not" is used to indicate that an action is both unauthorized and forbidden.

(4) Rules of law are stated in the indicative mood.

§ 504. Effective dates

(a) Except as otherwise specified, the provisions of this Act take effect upon enactment.

(b) Chapters 2 and 3 of title I take effect on July 1, 1969.

(c) Title III takes effect on July 1, 1970.

[U.S.C., title 15, sec. 1601 note.]

NOTES

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THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

COMMENTS MADE AT HEARING OF
HB 497
4:00 P.M. February 23, 1970
By Richard T. Hall

In developing the bank credit card for Alaska, we did so because we were constantly asked for such a program by the consumer over the past three to four years. Bank credit cards became prevelant throughout the lower 48 states and have such wide acceptability that both the existing citizens of the state and the new comers are desiring such a card. In addition, the merchants throughout the state were extremely desirous of the bank credit card in order to offer their customers the choice of a credit or cash sale. We did not feel that our bank could initiate a program statewide that would be able to reach a great enough market to make it pay. However, after a thorough and extensive survey and study, we felt a program could be initiated statewide that would reach a break-even point sometime approximately two years after inception of the program.

We developed the program as it is today using BankAmericard, which we feel is the finest bank credit card system in the world today. It offers the complete spectrum of a credit card program with its various facets to the people to Alaska and their tremendous endorsement of the program speaks for their acceptance.

At the present time, Alaska BankAmericard has over 22,000 cardholders. These are adults, responsible citizens of the state, that were picked on strict criteria based on their ability to handle credits. Following Alaska law, we did not mail unsolicited cards, but rather wrote letters to people we felt were qualified to receive the cards, asking them to directly solicit a card from us. The response was terrific. At this point, I should mention too, that one of the major objections voiced elsewhere on bank credit cards has been the fact the potential cardholder assumes a liability if his card is lost or stolen. However, Alaska BankAmericard does not either imply or in practice create any liability to the cardholder for a lost or stolen card.

Another criticism voiced recently about credit cards in the south 48 is that they tend to have an inflationary effect. I can only say that our research indicates that this is not so. The recent speach by Mr. Andrew Brimer, a member of the Federal Reserve Board, which made an extensive survey of all bank credit cards, indicates that their findings do not lead them to believe that bank credit cards are inflationary. The report indicates that bank credit cards are creating a shifting of credit from one type to another.

1. This bill presumes that all merchants on a credit card program change their prices to absorb the cost of the credit card program. This is not a valid argument for the following reasons:

a) If merchants changed their price they would no longer be competetive.

b) The merchant pays for and gets a full credit card program through the bank at a rate much less than the cost of major retail department store credit operations. According to a 1968 study of the National Retail Merchants Association, the cost of major retail department store credit operations was set at 7.77% of the total credit sales.

2. A person asking for the cash discount from the merchant assumes that all persons will be carrying a bank credit card and all customers will have the choice of purchasing either with cash or with a bank credit card. In actuallity, statistics show that even after several years of a successful credit card operation, a merchant can only expect 30% of his sales to be credit sales.

3. House Bill 497 also assumes that a retail merchant will have sold the same volume of sales with or without the bank credit card. In actuallity, the bank credit card allows the small retail merchant to expand his sales by offering a credit option to his customers. It allows him for once, particularly in Alaska, to compete favorably with the large retail merchants who have their owen credit programs. To pass this bill would put the small merchant back in the same position he has always had in Alaska and that is not being able to offer a credit program to his customers and not being able to effectively compete with the larger retail outlets.

In addition, there is proof that bank credit cards are sought by the merchant to expand sales [redacted] many times, and this is true in Alaska. We have signed merchants that already have and have retained their own credit operation after signing with BankAmericard. They have signed because they recognize that BankAmericard in Alaska can expand their sales. It is therefore, then, the expansion of the sales that allows them to absorb the cost of the credit card program.

4. Now let's take a look at the merits of the program to the merchant that offset the merchant discounts.

a) Immediately can turn his receivables into cash.

b) He can offer a complete credit card program to his customers with no liability of loss to himself.

5. Let's take a look at the merits of the program from the consumer standpoint.

a) Since BankAmericard in Alaska allows the cardholder the option of properly budgeting his monthly expenses rather than having to suffer a month of high expenses, the cardholder can more effectively budget his income.

b) For reasons mentioned above, the customer does not pay additional for his merchandise by the use of his card.

c) Not only is this card usable within the State of Alaska but it gives the cardholder the option of shopping at over 1,000,000 outlets on a world wide basis.

d) The cardholder, as stated in the original agreement form, is not liable should his card be lost or stolen. This is not always true of other credit cards.

6. Proof of the pudding - have the merchants and consumers of Alaska accepted the program?

a) As of February 2, 1970 there were over 22,000 cardholders in Alaska. Also it should be remembered that these people had to ask for the card and most had to send back a legal acceptance card as prescribed by Alaska statute 06.05.209.

b) Over 825 merchants have signed up for the program and the number continues to grow daily.

c) Are the card holders using the card? As of February 12, there was over $1,400,000.00 outstanding on the system.

d) It should also be remembered that all banks in Alaska were asked to join the program. Seven out of 10 banks in Alaska chose the program. This program is designed to provide credit to the small credit user or consumer who previously did not have such credit available.

7. What would be the effect of passage of House Bill #497?

Passage of house bill #497 would gut the BankAmericard program in Alaska. Obviously no merchant could afford to discount over half of his sales that were made on the basis of cash. This means that we would go back to being the only state not having the availability of an international credit card program such as provided by the BankAmericard program.

Also, other forms of credit cards would be prohibited from operating within Alaska. This would include Carte Blanche, American Express, Diner's Club, Select and others. I do not believe that the people of Alaska desire to be discriminated against by the careless passage of such a bill.

M E M O R A N D U M

TEM February 20, 1970.

Re: Credit Card Bill Pending
Before Alaska Legislature

I understand that there is a bill pending in the Alaska Legislature which would require a merchant who honors a credit card and sells the underlying obligation to a credit card issuer at a discount to sell, with respect to a similar transaction involving a non-credit card purchase, the goods or services at a price equal to the net proceeds received by the merchant in the credit card transaction. For example, if an item sells for $100, and if the discount is 3%, the net proceeds to the merchant in a credit card sale involving that item equals $97, and the proposed legislation would require the merchant to offer that item for sale in a non-credit card sale at a price of $97. Passage of this legislation would create significant problems for merchants under the Truth in Lending Act and Regulation Z.

Section 226.2(i) of the Regulation defines "cash price" as "the price at which the creditor offers, in the ordinary course of business, to sell for cash the property or services which are the subject of a consumer credit transaction." Under the proposed legislation, in the context of the example given above, the cash price would appear to be $97. The price paid by the credit card holder would, however, be $100. Under Section 226.4(a) of the Regulation, the

extra $3 which the credit card holder pays would be classified as a finance charge.

Under Section 226.2(f) to "arrange for the extension of credit" means to provide or offer to provide consumer credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit receives or will receive a fee, compensation, or other consideration for such service or has knowledge of the credit terms and participates in the preparation of the contract documents required in connection with the extension of credit." This section further specifically provides that it does not include honoring a credit card or similar device where no finance charge is imposed at the time of that transaction. Because, as set forth above, the merchant in the example given will have imposed a finance charge, the merchant does not come within the exclusion. Therefore, the merchant is a person who "arranges for the extension of credit." This makes the merchant a "creditor" under the Regulation because under Section 226.2(m) thereof, the term "creditor" is defined as "a person who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit."

Under the definitions of "consumer credit" and "credit" set forth in Section 226.2 of the Regulation, since the merchant is a creditor, the sales transaction becomes a consumer credit

transaction. Therefore, the merchant would be required under the Regulation to give a Truth in Lending Disclosure Statement. This would be in addition to the open-end credit disclosure statement that would have been given by the credit card issuer to the cardholder prior to the use of the credit card.

The form of required disclosure is set forth in Section 226.8(d) of the Regulation. Basically, the form of disclosure is a loan disclosure under Section 226.8(d). The annual percentage rate to be disclosed would be determined by dividing the amount of finance charge by the amount financed and multiplying the quotient (expressed as a percentage) by 12. In the example given above, the rate would be approximately 37%.

In addition, since it is clear that both the credit card issuer and the merchant are "creditors" as defined in the Regulation, Section 226.6(d) of the Regulation, which deals with multiple creditors, would be applicable.

The application of the Regulation as a whole to this type of hybrid transaction is extremely difficult to clearly ascertain. The risks of non-compliance with Regulation Z are enormous.

It is open to question whether any kind of compliance with Regulation Z would be possible in cases involving a merchant who accepted various types of credit cards under plans involving different discounts. Regulation Z provides no clue as how the "cash price" would be determined in such a situation.

This memorandum is not intended to be a detailed analysis of the problems involved because time does not permit. The problems are, however, overwhelming.

Thomas E. Montgomery
Counsel

BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

For Release on Delivery
Tuesday, September 23, 1969
12 noon, P.D.T. (3 p.m. E.D.T.)

NEW HORIZONS IN CREDIT CARD BANKING

Remarks By

Andrew F. Brimmer
Member
Board of Governors of the
Federal Reserve System

Before the

Seattle Clearing House Association

At the

Rainier Club
Seattle, Washington

September 23, 1969

NEW HORIZONS IN CREDIT CARD BANKING

by

Andrew F. Brimmer*

In the summer of 1968, the Federal Reserve Board published a comprehensive assessment of bank credit cards. Since then, the expansion of bank credit card programs has continued at a rapid pace. Even so, some features of credit card banking that were of concern during the period prior to the System study are still attracting considerable attention, not only in the nation's press, but also among members of Congress and within Government regulatory agencies.

The System Task Force that was established by the Federal Reserve Board in the Spring of 1967 -- and whose report was released just over a year ago -- explored quite thoroughly the implications of the growth of bank credit cards for consumers, merchants, the banking system, bank supervision, and the management of monetary policy. I was the Board member most closely identified with that study.

We have just completed a review of the bank credit card situation to determine whether recent developments warrant any change in the earlier assessment. This review has included an analysis of recent trends in credit card banking, a survey by the Federal Reserve Banks of the mailing procedures used in the launching of new credit card plans and an analysis of bank

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*Member, Board of Governors of the Federal Reserve System. I am grateful to a large number of persons in the Federal Reserve System for assistance in the preparation of these remarks. I am particularly indebted to the following members of the Board's staff: Tynan Smith, Brenton C. Leavitt, David Hull, Katharyne Reil, and N. Edwin Demoney, Jr. Jerome W. Shay helped with the discussion of antitrust implications of bank credit cards.

examination reports over the last year to determine the extent to which State member banks are following the guidelines on credit card operations suggested by the Board as a result of our earlier study. Our review has also had the benefit of the preliminary results of the Federal Reserve Board's Survey of Consumer Awareness of Credit Costs. The BankAmericard and Interbank organizations provided recent information relating to their respective plans.

On the basis of this review, it appears that developments in credit card banking in recent months do not call for a change in the basic conclusion of our earlier study: that credit card programs are legitimate and useful services provided by banks to their consumer and merchant customers. Furthermore, there appears to be no reason to change the Board's position that the System has adequate supervisory powers governing the development of bank credit card programs and does not see any necessity for special legislation to limit or control bank credit cards.

At the present time, however, the principal questions regarding bank practices in issuing credit cards are virtually the same as they were two years ago. There is still considerable concern that the mailing of unsolicited credit cards imposes a burden upon consumers who have to destroy or return unwanted cards. Also, there is the fear that some consumers may have their credit standing jeopardized as a result of misuse of cards lost or stolen in the mails, or at least might be subject to litigation to prove their lack of liability for such misuse. Credit cards are also being blamed for encouraging some consumers to overextend their

use of credit, thus contributing to personal bankruptcies. It has been alleged that credit cards are adding to inflationary pressures.

In the last few months, it has become even more clear that two large, nation-wide systems are playing a dominant role in credit card banking. So far, this development is posing no problems in terms of competition, but the trend may raise a range of questions of public policy in the future.

Before examining these issues in more detail it might be helpful to provide perspective by highlighting recent trends in bank credit card programs.

Recent Trends in Credit Card Banking

On June 30 of this year, 699 banks were offering credit card plans, and they had $1.7 billion of credit outstanding. (See Table 1, attached). Thus, in the first six months of 1969, the number of banks with credit card plans rose by 189 (37 per cent) and the amount outstanding climbed by $393 million (30 per cent). In addition to these nearly seven hundred banks with credit balances outstanding under credit card programs, several thousand agency banks were participating in credit card plans but did not hold receivables.

The share of total credit card balances held by each class of bank has changed little during the last two years. National banks continue to hold more than three-quarters of the total while another one-sixth is held by Federal Reserve State member banks. Although the amount of credit outstanding at nonmember banks under credit card plans remains small,

the number of such banks with credit card plans has been increasing more rapidly than for any other class of bank. At the end of last June, these banks represented more than one-third of all credit card banks.

Large banks (those with deposits of $1 billion and over) held more than two-fifths of the total amount outstanding on credit card plans at the end of 1968, about the same proportion as in September 1967 (when the Federal Reserve Board began to collect data on such plans). However, these banks have not kept pace with the small and medium-sized institutions going into the credit card field -- dropping from 9 per cent of the total number to 5 per cent in the 15-month period. Banks with total deposits of less than $25 million have shown a faster rate of entry than other size groups. Yet, although they represented more than two-fifths of all credit card banks, they held less than two per cent of total receivables at the end of last year. Most of the outstanding indebtedness on credit cards continues to be in the hands of banks in the $100 million and over deposit class. Many of these banks had plans in operation before the Fall of 1967.

These trends are charted on the basis of information obtained every six months from the Call Reports submitted by all insured banks. In addition, monthly data on bank credit cards have been collected since the beginning of 1968. This series has been published as part of the Board's monthly report on consumer credit since June 1968. An examination of the monthly data also shows a steady increase in the amount of credit outstanding as well as considerable fluctuation of a seasonal nature in monthly extensions and repayments. (Table 2). However, much longer

experience will be necessary before seasonal adjustment factors can be derived and applied to these figures. Another limitation of the reported totals is a slight degree of understatement because of the lag in obtaining reports from additional banks that are continually entering the credit card field. We expect to overcome this difficulty before the end of 1969 by shifting to a sampling basis for obtaining monthly reports.

Regional Growth Patterns

The western section of the country continues to be the principal center of credit card banking, but this technique of consumer financing is spreading rapidly in other regions of the country. (Table 3.) At the end of last December, 115 both member and non-member banks in the San Francisco Federal Reserve District had $531 million of receivables outstanding under credit cards, representing over one-fifth of all the banks with such plans and two-fifths of the total credit. Second place was held by the Chicago District which had $182 million in outstandings. The New York District was fairly close behind with $155 million. The next two in order were the banks in Atlanta and Richmond, with $100 million and $93 million, respectively, in outstandings.

The slower growth in bank credit cards in the Northeast Districts through 1968 partly reflected the relatively greater popularity of check-credit plans. At the end of last year, about $800 million was outstanding under check-credit plans -- of which well over two-fifths was concentrated

in the Boston, New York and Philadelphia Federal Reserve Districts. In contrast, banks in these same Districts accounted for less than one-fifth of the amount of credit outstanding under bank credit cards at the end of 1968. From the monthly consumer credit series, it appears that check-credit rose by one-fifth in the first seven months of 1969, while the amount outstanding under bank credit cards rose by over one-third. During the last 18 months, the share of check-credit in the total shrank from two-fifths to one-third. The relative positions of the two types of bank credit plans may shift further in favor of credit cards over coming months -- reflecting the recent adoption of the credit card form by several major New York banks which previously offered only check-credit plans.

The regional pattern of growth in bank credit card plans is shown in the results of the survey made by the Federal Reserve Banks in August of this year. (Table 4.) Between the end of June 1968, and the end of August 1969, the number of banks offering credit plans rose by 68 per cent. The increase was sharpest in the Richmond District (346 per cent), followed by Atlanta (192 per cent), Kansas City (120 per cent), and Cleveland (100 per cent), New York (82 per cent), and Dallas (76 per cent). The pace of expansion was slow in other Districts -- including no expansion at all in the number of banks offering bank credit cards in the Philadelphia District. In some Districts (San Francisco and Chicago, for example), the initial efforts to launch bank credit cards had been made earlier.

Distribution of Bank Credit Cards

Banks have found that the most effective way to develop customers for a new credit card plan is to mail a large number of unsolicited cards. This procedure resolves simultaneously the problem of having enough merchants signed to the bank's plan to make the card useful to consumers and of having sufficient people obtain the card to make forming the plan attractive to merchants. Competitive situations appear to rule out the alternative method of depending on applications to be returned before cards are mailed.

Yet, the use of unsolicited mailings has become one of the principal sources of controversy surrounding the advent of credit card banking. The practice involves some financial risks to the issuing banks and some inconvenience to the small percentage of potential customers who do not want to receive such cards. The substantial financial losses experienced by a number of Midwest banks a few years ago when they launched credit card plans on the basis of unsolicited (and in some cases unscreened) mailings led banks to take special steps to protect themselves against theft of cards during the process of distribution. They have also taken measures to minimize losses to customers through misuse of cards once they have been accepted. However, there has been no fundamental revision in the technique of distributing bank credit cards: the use of unsolicited mailings remains the basic method.

The Federal Reserve Board has been highly conscious of the problems involved in unsolicited mailing of bank credit cards. For this

reason, in the summer of 1968, the Board expanded the check list of questions used in the examination of State member banks; examiners were instructed "to make sure that banks realize the importance of developing initial mailing lists from their own records and carefully screening them before use." The same quidelines applied to State member banks are also applied to national banks through the examination procedures. The Office of the Comptroller of the Currency was the first Federal bank supervisory agency to use a separate credit card section in its examination report, and it has instructed its examiners to see that the national banks use prudent procedures in connection with unsolicited mailings.

At the Federal Reserve Board, we have made an assessment of the extent to which State member banks are following the suggested guidelines with respect to credit card plans. On the whole, these banks seem to have exercised prudence in credit card management. This conclusion is derived from a review of reports of examination for 65 State member banks with credit card plans.1/

While unsolicited mailings were found to have been the principal means of distributing cards, no significant problems were uncovered --

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1/ As of June 30, 1968, there were 64 State member banks with credit card plans. On last December 30, the number was 65, and it was 93 on June 30, 1969. Since State member banks are examined once each year, the reports on 65 banks provide almost complete coverage since the guidelines were recommended in the late summer of 1968.

certainly none of the magnitude of the difficulties surrounding the Chicago episode of late 1966 and early 1967. Nine of the 65 banks mailed cards on an unsolicited basis without obtaining adequate credit information on potential customers.

Other unsatisfactory features drawing comments of examiners are as follows:

Problem	Number of banks
Lack of control over unissued cards	1
Ineffective collection policies and practices	3
Inadequate procedures for reclaiming credit cards when accounts became delinquent	2
No preprinted expiration dates*	2
Lack of control on customers exceeding limits	4
Customers not informed of credit-card limits	1
Slow processing of items	3

In each of these instances, the unsatisfactory features noted by Federal Reserve bank examiners were corrected by management where problems existed. Specifically, in the nine cases involving lack of adequate credit information, practices were changed promptly, and such information is now obtained before cards are granted.

An even sharper view of bank credit card distribution practices is provided by the results of the survey undertaken by the Federal Reserve Banks in August this year. The survey covered the practices followed by Federal Reserve member banks which began bank credit card plans between June 30, 1968, and the end of August 1969. The results are summarized in

*Plans were effective in the 1950's, and no problems have been encountered.

Table 5. Several conslusions can be drawn from the information submitted. Unsolicited mailing of cards is used more often than not in starting new plans; but in some Federal Reserve Districts, an application-type system is also used frequently. In most cases, mailing lists are compiled from present customers of the banks, and these are screened before cards are mailed. In three Districts (Cleveland, Richmond, and Atlanta), a few banks were reported to have used outside sources (such as directory services, credit bureaus or credit rating firms) in adding to their mailing lists -- which were composed primarily of their own customers. In one case (in the Kansas City District), a bank was reported to have used unsolicited mailing of cards to launch its credit card plan -- including the use of names obtained outside the bank -- without screening the lists prior to mailing cards to potential customers. Moreover, in that case, reportedly no credit check is made of the accounts until such time as the accounts became active.

Where information was available from the Federal Reserve Bank survey, it indicated that pre-mailers were generally used, as recommended in the Federal Reserve guidelines. These pre-mailers advise the customer that a card is being sent unless the customer indicates to the bank that he wishes his name removed from the list. In this way the customer is able to refuse a card before it is sent. The pre-mailer also helps reduce the prospect of fraud by alerting the customer to expect the card and also informs the bank of changes in addresses. During a single week this summer,

for example, more than 2 million bank credit cards were mailed in New York when a new plan was adopted by a group of three major banks. The fact that these cards had been preceded by pre-mailers undoubtedly contributed to holding reported losses or thefts of cards during this mailing to 250 cases.

On the other hand, the pre-mailer still puts the burden on the potential card recipient to take a positive step to stop the card's arrival if he does not want it. This is one of the remaining sources of complaint voiced by consumers. An even more serious complaint stems from the sending of cards via registered mail in a few instances. So far only a handful of banks have adopted this practice -- mainly because they consider it to be too costly to the bank. (One bank is reported to have spent an average of 80 cents per mailing to distribute its cards by registered mail.) However, in my personal opinion, the really important objection to the use of registered mail in the distribution of unsolicited credit cards is the burden placed on consumers. Since registered mail must be accepted by a responsible person at the address indicated, in many cases this means that the potential card holder must make a special effort to pick up the letter at his post office. Not infrequently this means taking time off from work (many times without pay), incurring transportation costs and other inconveniences. Consequently, the actual cost to potential card holders may be substantially greater than that borne by the sending bank. Since the main objective of employing the registered

mail technique is to minimize the exposure of banks to financial losses associated with the distribution of its own card through unsolicited mailings, I personally feel that the shifting of any part of this cost to potential consumers is entirely unwarranted.

Aside from the above reservations, it appears that precautions banks have taken recently to avoid potential problems with credit card mailings are being helpful. In the summer of 1968, the Board decided, after reviewing the results of the System Task Group Study, that there was no need to ban unsolicited mailings. That position has not changed.

Earlier this month, the Federal Trade Commission held hearings on a pending regulation that would forbid the mailing of credit cards without the written request or written consent of the recipient. Such mailings would be designated as unfair trade practices and unfair competition. Banks would not be covered by this prohibition since the Federal Trade Commission lacks jurisdiction over the banking system. If the Federal Trade Commission decides to adopt this regulation, legislation to prohibit the unsolicited mailing of bank credit cards undoubtedly would be pushed.

The Board's position has been and continues to be that (while the unsolicited mailing of credit cards by banks has involved some problems) there have not been any developments thus far that appear to make Federal legislation necessary. With respect to the effect of

unsolicited distributions of credit cards upon competition, the Board has concluded that the prohibition of this method of issuance of cards would seriously hamper banks in launching credit card plans, thus giving those banks already in the field a protected position that would discourage competition. On October 9, 1968, I testified on behalf of the Board before the Subcommittee on Financial Institutions of the Senate Banking and Currency Committee. In my statement, I said:

> "Banks have found that the most effective way of starting a new credit-card plan is to mail a large number of unsolicited cards. This is necessary to resolve simultaneously the problem of having enough stores signed to the bank's plan to make the card useful to consumers and of having sufficient people using the card to make forming the plan attractive to merchants. Reliance on the alternative method of depending upon application returns entails considerable delays in reaching a profitable volume of business, delays which may be unacceptable when trying to compete with other banks' plans."

I still believe that the opportunity to distribute credit cards via unsolicited mailings should not be closed off. I believe it is to the country's advantage to keep the competitive channels open for the thousands of banks that have yet to enter the credit card field. On

the other hand, several further steps need to be taken to minimize the remaining burdens on consumers.

Customer Liability for Fraud Losses

The most critical remaining problem involves customer liability for fraud losses if he fails to receive a card. It should be recognized that this is not entirely a problem of unsolicited mailing -- the same problem could arise for requested cards and renewals of existing cards. In addition, cards can be and sometimes are fraudulently used after the customer accepts the card.

With regard to the first type of fraud -- the unauthorized use of cards stolen before they are received or accepted by the proper person -- we know that most banks do not attempt to collect from the intended recipient. If there are banks which do, at least the Board is not aware of them. Moreover, it seems evident that they would have legal difficulties. In addition, the trend is for states to pass laws specifically exempting from liability the customer who has not accepted or begun to use an unsolicited card.

In the case of misuse of cards stolen or lost after being accepted by the cardholder, it is generally true that the customer has no liability for fraud losses after the bank has been informed that the card is lost or stolen. As for the liability of the cardholder prior to informing the bank, there is much more variation in banks'

policies. Some banks seek to collect in these cases from the customer for all losses occurring before the bank is notified. Others do not attempt to collect, even where the customer does not report the loss or theft of the card. Still other banks (and some State statutes) specify an upper limit on the dollar liability of the customer.

The majority of banks apparently follow the practice of absorbing losses, but do not reveal that policy to their customers for fear they might be unduly careless in their handling of the card. This is often true even where the bank informs the customer that his liability is limited to $50 or $100. These announced limits are primarily designed to make the customer take care in the handling of the card and to stimulate prompt reporting of lost or stolen cards. Thus, actual policy is often much more lenient than announced policy.

I would like to see all banks inform their customers of their potential liability. It is possible to do this in the literature accompanying the card, and a number of banks have developed statements which achieve this objective in a simple, straightforward manner. At a minimum, announcements mailed by banks should reassure customers that they are not responsible for cards stolen before they are received. Such announcements should specify what a customer's maximum liability is after acceptance of the card. Of course, whether a bank actually attempts to collect infrequently, if at all, is a decision for management. But uncertainty on the part of the customer as to the potential

liability while not as susceptible to advance determination, is in rather the same category as uncertainty about true interest rates. In any event, failure to disclose the terms of liability are no longer tolerable standards of business conduct for card issuers.

The question of legislation has arisen on this issue, and it may be helpful to restate the comments I made last October on behalf of the Board before the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency. The Board felt as a matter of principle (1) that the entire burden of loss arising from cards stolen before being received by the customer should rest entirely on the issuer and (2) after acceptance, the customer could become liable for losses before the bank is informed, but the liability on the customer should be limited. The issuer is in a much better position to bear losses and control them. In any event, the customer should be clearly informed of his liability.

The Board believes that some legislation may be required to clarify the liability question and to achieve uniformity of treatment. If appropriate legislation is enacted with respect to customer liability, the major problem associated with unsolicited mailing will be solved. To be effective and equitable, such legislation should apply to other credit cards, including travel and entertainment cards, gasoline company cards and so on, as well as to bank credit cards. The legislation might be at either the State or

Federal level. It is not self-evident that a Federal law is needed -- although it may be. In states such as Illinois which have laws on this subject, the legislation has apparently had no adverse effects on the banks' operations while helping clarify the position of the cardholder.

Ownership of Bank Credit Cards

It has been evident for quite some time that the vast majority of consumers accept bank credit cards once they are received -- although they may acquire them through unsolicited mailings. Moreover, a sizable proportion of those receiving such cards actually use them. In contrast, very few potential bank customers seem prepared to initiate applications for such cards.

To learn more about the extent of bank credit card ownership, a question was included on the questionnaire used in the Federal Reserve Board's Survey of Consumer Awareness of Credit Costs conducted in June of this year. This Survey, covering 5,150 households, was undertaken mainly to provide a benchmark measure of consumer knowledge before the Truth in Lending Law went into effect on July 1, 1969. Questions were designed primarily to find out the extent to which consumers now know about the finance charges and interest rates on their various types of consumer credit transactions. The interviewing was completed about July 1, but processing of the complete results will not be finished for a month or so. In the meantime, preliminary data on the ownership of bank credit cards

by education and income were developed on the basis of a random subsample of 1,025 of the 5,150 responses in the Survey.* The results are shown in Table 6.

These findings are by no means surprising. About one-quarter of the total respondents had a bank credit card. This proportion increased steadily as the level of income and education rose. While only one-sixth of respondents with grade school educations had bank credit cards, the proportion was 26 per cent for high school graduates and 32 per cent for college graduates. Among those with post graduate college experience, 48 per cent had a bank credit card.

With respect to personal income, the same trend is evident. Only 7 per cent of respondents with incomes under $3,000 reported having such a card. In the income range $5,000 - 7,999, only about one-fifth of the households reported having a bank credit card. In the range $10,000 - 14,999, the proportion was 31 per cent. For those with incomes over $15,000 the ratio reached 44 per cent.

Again, this new evidence on the ownership of bank credit cards reinforces the conclusions reached earlier: the American public taken as a whole has accepted the credit card as a useful innovation in banking.

Use Patterns and Economic Impact of Bank Credit Cards

It is becoming increasingly evident that credit extended through

* Sampling experts involved in the Survey have given assurance that the proportions shown for this subsample probably will not be very much different from those shown by the entire sample.

Start of excellent agreement against idea that bank credit cards have furthered inflation.

bank credit cards is being used as a substitute for some other forms of credit. However, there is no evidence suggesting that the total amount of bank credit extended to consumers has accelerated because of the spreading use of cards.

Credit card banks were transacting a somewhat larger proportion of their consumer instalment business through credit cards at the end of 1968 than a year earlier. At the end of last year, about one-tenth of their instalment credit was on credit cards, compared with slightly less than one-twelfth at the close of the preceding year. Nearly all of the credit card receivables continue to arise from retail sales. In spite of the fact that many plans offer cash advances, such transactions now account for less than one-sixth of all credit card loan volume and appear to be declining in relative importance so far this year. (See Table 7.)

Consumer instalment credit has increased in recent months, but not as a proportion of total bank loans. During the last two years of rapid credit card growth, consumer instalment credit has accounted for only one-seventh of the banks' total loan portfolio and credit card receivables for less than one per cent. (See Table 8.) In spite of the marked increase in credit card outstandings, total holdings are still too small relative to both consumer borrowing and total bank borrowing to be of great significance in the recent expansion.

It appears that the increased use of bank credit cards has lessened to some extent consumers' reliance on other types of credit

card plans. However, because of the aggregate nature (and seasonal variablity) of data, it is difficult to pinpoint the degree of substitution that is taking place. Nevertheless, the available statistics do seem to point in this direction. (See Table 9.) During the 18 months ending June 30 of this year, the amount outstanding under bank credit cards more than doubled, rising from $800 million to $1.7 billion. In contrast, consumer outlays financed by travel and entertainment cards registered no growth at all. On a year-to-year basis (which partly eliminates seasonal factors), department store revolving credit outstanding under credit card plans rose by about $200 million through the end of last June. Retail charge accounts rose by $600 million between December 1967, and December 1968, but in the twelve months ending last June, the increase was only $300 million. The year-to-year increase in the amount outstanding under oil company credit cards was also about $200 million.

Thus far, there is no conclusive evidence that credit cards have tended to raise prices. While the retailer is faced with an extra cost in the form of the merchant discount each time a credit card purchase is made, it does not follow that there is a net increase in costs or that the purchase would have been made without a card. To the extent credit cards replace high-cost merchant-operated credit plans, they reduce costs; and to the extent they attract customers who wish to buy on credit, they generate increased sales which may offset any increases in costs.

Thus, although the evidence is admittedly not conclusive, it does suggest that credit cards have not had -- and at present magnitudes are not likely to have -- any noticeable impact on general price levels.

There is also the question of whether individual consumers might get deeply into debt because of easy credit extended through these plans. Again it is difficult to point to a quantitative conclusion. The average line of credit extended under credit card plans is in the neighborhood of $350. This is not so high as to be a cause in itself of a customer incurring excessive indebtedness. In addition, the credit standards aim at middle-income consumers who by and large can afford to contract debt within the applicable limits. This is indicated also by the preliminary tabulation from the Board's Survey of Consumer Awareness of Credit Costs mentioned above. While about one-fourth of the consumers covered by this Survey reported having a bank credit card, nearly one-half had incomes over $10,000, and only about one-tenth had incomes of less than $5,000.

Finally, there is no evidence that the use of credit cards is contributing substantially to inflationary pressures. Only a small part of the growth in consumer credit in recent months can be attributed to the expansion of bank credit card plans.

Evolving Structure of Credit Card Banking: Implications for Public Policy

The Federal Reserve's study of bank credit cards published last year concluded that there was no reason to believe that the most widely-used

systems raised any serious questions under the antitrust laws. At that time, the Department of Justice had initiated actions in a few cases (involving potentially adverse effects on competition or requirements that merchants limit their participation to one bank's plan). But, in general, there was no suggestion that serious antitrust problems were on the horizon. The same conclusion seems warranted today.

However, as the two national interchange systems for bank credit cards continue to grow, the implications for antitrust policy may become more important. As of last June 30, commercial banks which were members of these two systems (BankAmericard and Interbank) held a total of $1.5 billion of credit card outstandings (Table 10). This was 90 per cent of the total outstandings of $1.7 billion on that date.

While the details differ somewhat between the two systems, the scope of their activities is reasonably comparable. While Interbank has enrolled a somewhat greater number of card-issuing banks, BankAmericard (at least as of last June) seems to have enlisted a somewhat greater proportion of the large banks. This is suggested by the fact that the amount of outstanding credit averaged $3.6 million for banks in the BankAmericard system, compared with $1.8 million for those in the Interbank system. The number of agency banks (those which offer a credit card but do not carry receivables on their own books) in the two systems was fairly close -- 2,900 for BankAmericard and 2,550 for Interbank. BankAmericard member banks had 22.9 million cardholder accounts, and Interbank members

had 20.5 million. The two systems had about the same number of merchant members (450,000). The amount of outstanding credit totaled $660 million for BankAmericard member banks and $900 million for those in Interbank. The average amount outstanding per active account was virtually identical for banks associated with the two organizations -- $185 for BankAmericard and $180 for Interbank.

It may be that the BankAmericard and Interbank systems soon will have even more banks signed up. As this occurs, which seems likely from the antitrust law standpoint, it would be important that the two systems continue to remain open for new banks to join.

The mere fact that the two interchange systems are attracting more and more banks is not the critical question under present Federal antitrust statutes, but rather how the interchange groups exercise the power acquired, as it were, through "bigness It may be recalled that the Associated Press (which also runs an interchange system) had antitrust troubles in the 1940's. These did not arise just because it was the news-gathering agency for more than 1,200 subscribing member newspapers, but because of unreasonable restrictions on admissions of new members and other anticompetitive restrictions (such as exclusive dealing arrangements) binding on the subscribing newspapers.

A question that thus far has been more theoretical than practical is whether nonbank institutions should be able to join bank credit card systems. The two major systems currently do not have non-bank members.

During the preparation of the Federal Reserve's bank credit card study in 1967-68, the matter of "nonbank entry" was discussed, but it was not pressed. However, if small, nonbank credit cards find it difficult to meet the competition of bank cards in the future, the question of nonbank entry into nationwide interchange systems may take on some importance.

Whether credit card operations, especially those under BankAmericard and Interbank, ought to be likened to public utilities has occurred to some observers. Whether this is a proper comparison remains open. To begin with, in some respects the regulation of banking today is much like public utility regulation, except for rate regulation. Aside from usury and similar statutes, the permissible interest charges on loans are not regulated. In addition, there appears to be no legal obligation for card-issuing banks to serve all applicants for service in the sense that such an obligation has developed in the public utility field for water companies, telephone companies, and the like. Banks that have issued credit cards -- including banks in national card interchange systems -- are individual competitive units. The sale of credit may be an indispensable service, but at present it is not monopolized, although we may be moving in the direction of fewer banking institutions. The credit card device, plus computers, may move us faster on that course than in earlier periods, however.

While views on the matter may differ, as indicated above, some might feel that the development and growth of credit card interchange arrangements suggest the advisability of utility-type regulation. For example, interstate bank credit card interchange systems might be made expressly permissible but only under a Federal licensing procedure. The practices of any such system, including those of the card-issuing banks, would be subject to regulatory standards prescribed by the Federal licensing authority, which might be responsible also for prescribing maximum permissible finance charges for card holders and maximum permissible discounts on other costs for merchants and other concerns participating in a card with an interchange arrangement. Regulatory standards could be devised to assure, among other things, the entry of new banks and acceptance of new cardholders on equitable, nondiscriminatory bases.

The theory -- and reality -- of such an approach, of course, would depend on whether the bank credit card interchange arrangements were approaching monopoly proportions. In this posture, the tendency for uniform practices would seem to increase, as might the likelihood of operating techniques not conducive to the public interest. Credit being virtually an indispensable service, and the advantages of interchange arrangements being what they are to the banks, their cardholders, and participating businesses, at least some of the basic features for the application of a utility-type control would seem to be present.

As will be noted, such an approach as outlined generally above ignores the gas and oil cards, the T and E cards, and other cards issued

by nonbanks. It will be a long time, if ever, before these cards are displaced by bank cards. In the meantime, the Utility-type control limited to bank card interchange syst might seem unfair and opposed on this ground.

Briefly, however, it seems fair to conclude that, for the time being, and so long as BankAmericard and Interbank operate as they do now, it is unlikely that any antitrust issues will be raised. But, if either of those two systems -- or any other bank credit card plan, for that matter -- should initiate restrictive, anticompetitive arrangements, the antitrust laws could be expected to be invoked. An example of such a restriction would be that used one time by a bank which prohibited any merchant that signed up with that bank's card from signing up also with another credit card issuer. This practice was stopped by a consent decree following an antitrust challenge by the Department of Justice.

Finally, the key lesson is that banking institutions (or any other group) possessing substantial market power must be especially alert not to act oppressively or unreasonably. So far, the existing interchange systems for bank credit cards seem to be meeting this standard of responsible behavior.