M I N U T E S

SPECIAL COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

July 26-27, 1977
Room 510, State House

Members Present

Senator Neil Arasmith, Chairman
Representative Jim Holderman, Vice-Chairman
Senator John Crofoot
Senator Paul Feleciano, Jr.
Senator Larry Rogers
Representative Lloyd Buzzi
Representative Herman Dillon
Representative Charles Laird
Representative John Reimer
Representative Marjorie Thomson

Staff Present

Bill Wolff, Kansas Legislative Research Department
Bill Edds, Revisor of Statutes Office

Others Present

Ruth Wilkin, State Legislator
Bill Ewing, Southwestern Bell Telephone Company
Bill Gough, Kansas Association of Commerce and Industry
Gary Caruthers, Kansas Medical Society
H.B. McAfee, Jr., Sears Roebuck and Company
L.M. Cornish, Kansas Life Association
Neta Pollom, Security Benefit Life Insurance Company
Jack Roberts, Blue Cross, Blue Shield Insurance
Jim Holt, Kansas Credit Union League
Cordley Brown, Consumer Credit Commission
Paul Lewis, Kansas Bankers Association
Garnet Wrigley, Lawrence Consumer Affairs Association
Judy Kroeger, Lawrence Consumer Affairs Association
Bud Grant, Kansas Association of Commerce and Industry
JoAnn Klesath, League of Women Voters of Topeka
Harold Stones, Kansas Bankers Association
Jim Turner, Kansas Savings and Loan League
Don Miller, Credit Bureau of Topeka, Inc.
Walt Scott, Association of Credit Bureaus
Larry Wilson, Kansas Commission on Civil Rights
Anthony Lopez, Kansas Commission on Civil Rights
Richard J. Morrissey, Kansas Department of Health and Environment
Ruth Groves, American Association of University Women and League of Women Voters
Curtis E. Hartenberger, Social and Rehabilitation Services

July 26, 1977
Morning Session

The meeting was called to order by the Chairman, Senator Neil Arasmith, at 10:00 a.m. He asked if the Committee members had had a chance to review the minutes of the June 28-29, 1977 meeting mailed to them. Vice-Chairman Jim Holderman moved that the minutes be adopted. The motion was seconded by Representative Reimer. Motion carried.

Proposal No. 13 - Group Health Insurance Contracts

The Chairman called the members' attention to a letter from Dr. Robert Procter marked as additional testimony from the Kansas Psychological Association (Attachment A).

The Committee reviewed the Committee Report draft with particular attention being paid to the conclusion and recommendation section. The bill draft requested at the previous meeting was also reviewed. Staff indicated that the proposed bill would repeal S.B. 105 enacted in the 1977 Session (Attachment B).

Representative Laird expressed concern about insurance companies making payments to unlicensed treatment facilities. He also questioned the wisdom of third party payments for an initial amount without subscriber contribution. Such payments, he contended, served to encourage abuse and increase health care costs.

Senator Feleciano moved and Representative Holderman seconded that the monetary provisions contained in the bill draft be adopted. Representative Laird offered a substitute motion, seconded by Senator Crofoot that the $250 provision be reduced to $100 and the 80/20 percent sharing feature be changed to a 50/50 percent requirement. Motion failed. The original motion carried.

Regarding out-patient treatment facilities which would be eligible for payment staff noted that no neat list of facilities existed from which to choose. Senator Roger indicated that only licensed facilities should be considered. Staff briefly reviewed certain rules and regulations to demonstrate the meaning of "licensed facilities." Senator Feleciano felt that insufficient information had been provided upon which he could make a decision as to out-patient treatment. The Chairman requested staff to contact Dr. Harder or his appropriate staff person to appear at a later time in the meeting.

Proposal No. 12 - Equal Credit Opportunity

Chairman Arasmith introduced Mr. Hugh McAfee, Jr., Governmental Affairs Division of the Law Department, Sears Roebuck and Co., Dallas, Texas, and also associated with the Merchants Research Council, Chicago, Illinois. Mr. McAfee presented the members with several handouts and began his briefing on the Equal Credit Opportunity Act and Regulation B (Attachment C).

The Committee recessed at 12:15 p.m. for lunch.

Afternoon Session

Chairman Arasmith called the meeting to order at 1:45 p.m.

Mr. McAfee continued his briefing on Regulation B and the Equal Credit Opportunity Act. Following the briefing he told the Committee members that he would be available throughout the meeting for further questions. Chairman Arasmith asked if Kansas needed a state law and, if so, who should administer the law? Mr. McAfee referred to Dr. Smith's article regarding cost in the July/August, 1977 issue of Management magazine and suggested that Kansas wait and see if the federal ECOA is enforced. If the Legislature thinks that a Kansas law is needed, he would suggest that it be drafted as close to the federal law as is possible. The Consumer Credit Commissioner could be used as a regulatory agent if a Kansas statute were enacted.

Meeting was adjourned at 4:20 p.m.

July 27, 1977
Morning Session

The meeting was called to order by Chairman Arasmith at 9:05 a.m.

Members were given a memorandum from staff regarding Equal Credit Opportunity Complaints (Attachment D), and a copy of a memorandum from Thomas W. Moore, Education Specialist of the Kansas Commission on Civil Rights (Attachment E).

Proposal No. 12 - Equal Credit Opportunity (Cont'd)

Mr. Cordley Brown, Assistant Commissioner, Consumer Credit Commission, told the Committee that his agency had received few complaints since the federal ECOA law was passed. Thus far, he added, not much enforcement has been needed and, consequently, a state law is not necessary at this time. Since the passage of ECOA, coverage via magazines, T.V., radio and the press has been provided in an attempt to educate the public. The Federal Reserve Board has issued news releases and has pamphlets available as has the Federal Trade Commission and various feminist groups.

Mr. Stanley Lind, Kansas Association of Finance Companies told the Committee that his Association endorses the concept of the federal ECOA, but opposes the state adopting a "copycat" act. (See Attachment F.)

Mr. Harold Stones of the Kansas Bankers Association informed the Committee of the banking industry's efforts to educate their people on ECOA. ECOA was needed, he felt, but has caused many changes in the banking industry. Many more problems would arise if two agencies, state and federal, were interpreting the ECOA and Regulation B. (See Attachment G.)

Mr. Jim Turner of the Kansas Savings and Loan League, told the Committee that the League assisted its members in understanding ECOA through the use of handbooks. While the League does not oppose ECOA, it would like to see the federal act in use for a longer time before adding a second layer of state bureaucracy (Attachment H).

Mr. Walter Scott, Associated Credit Bureaus, Inc., presented the Committee with a pamphlet used by credit bureaus to educate consumers (Attachment I). Mr. Miller of the Topeka Credit Bureau answered questions mostly concerning application for credit by women and separate credit files.

Mr. Larry Wilson, Kansas Civil Rights Commission, explained to the Committee that the Commission is responsible for the administration of the Kansas Act Against Discrimination which was established to prevent and eliminate unlawful discriminatory practices in the areas of employment, public accommodations and housing based upon race, religion, color, sex, physical handicap, national origin or ancestry. The two sections of the Act which provide the Commission staff with jurisdiction to process complaints against lending institutions are found in the section on Public Accommodations and Housing. Age and matiral status are not under their jurisdiction (Attachment J).

Representative Ruth Wilkin appeared as a sponsor of H.B. 2499 and said that she hoped for full enforcement of the federal ECOA, but thought enforcement might be made easier if accomplished through state courts rather than federal courts. Mr. McAfee replied that suits can be brought through state courts at the present time.

Mr. Jim Holt, Kansas Credit Union League, was concerned with enforcement of the federal ECOA (Attachment K). Since penalties are so large, he felt that state examiners could locate problems and assist in their correction on the local level, rather than risking a large monetary federal court imposed penalty. Credit union examiners do not feel now that they have the authority to recommend a change to individual credit unions.

Staff presented the Committee with a copy of a statement by Philip C. Jackson, Jr., Governor, Board of Governors of the Federal Reserve System (Attachment L).

In the time remaining before the noon recess, the Committee returned to hearings on Proposal No. 13. Mr. Richard J. Morrissey, Department of Health and Environment,

appeared before the Committee (Attachment M). The Department was not aware earlier of the ramifications regarding the costs of health care involved in the Committee's study. He opposed the 100 percent coverage of the first $250 and recommended no first-dollar deductable. Senator Crofoot asked if the $250 provision was removed so companies could negotiate, would the Department approve the bill draft. Mr. Morrissey answered yes. Mr. Morrissey said that a certificate of need must be granted before a facility can be licensed.

Mr. Curtis Hartenberger of SRS appeared before the Committee. He commented that SRS has the authority to license alcohol and drug abuse facilities. Drug abuse facilities will be licensed by January, 1978. Licensed out-patient centers have been difficult to license due to certain restrictive requirements, but those requirements are being rewritten. Chairman Arasmith asked if out-patient care was feasible in the proposed insurance plan. Mr. Hartenberger answered yes. Mr. Hartenberger told the Committee that a house physician is not a requirement for licensing. He also recommended that the patient pay part of the cost.

The meeting was recessed until 1:30 p.m.

Afternoon Session

The meeting was reconvened by the Chairman at 1:30 p.m.

Proposal No. 12 - Equal Credit Opportunity

Senator Crofoot moved, seconded by Representative Dillon, that the Committee make no legislative recommendation to the 1978 Legislature. Senator Crofoot explained that he based his motion upon the testimony which indicated that the federal law pre-empts H.B. 2499 and further, that no testimony was heard which demonstrated a need for state administration. He felt, that the enforcement of the ECOA and Regulation B shoul be monitored to determine if local administration might be required in the future. Motion carried. Staff was directed to have the Committee Report reflect the Committee's concern about the enforcement of the federal act and regulations.

Proposal No. 13 - Group Health Insurance Contracts

Senator Crofoot moved, seconded by Representative Holderman, that the bill draft before the Committee be amended by deleting all references to monetary requirements for insurance contracts. Motion carried. Representative Buzzi and Senator Feleciano wished to be recorded as voting "no".

Senator Rogers moved, seconded by Representative Reimer, that the bill draft be further amended by incorporating the same licensed facilities into the out-patient section of the bill as contained in the in-patient section. Motion carried. Staff was directed to have the Committee Report reflect that the appropriate standing committee of the 1978 Legislature review the inclusion of licensed drug abuse facilities, since SRS should have those facilities licensed by January, 1978.

Representative Laird moved, seconded by Representative Reimer, that staff draft a new bill incorporating the changes adopted by the Committee. Motion carried.

The next meeting of the Committee will be on August 16-17, 1977. At that time the Committee will review the bill draft and Committee Report draft on Proposal No. 13, the Committee Report draft on Proposal No. 12, and hold hearings on Proposal No. 11 - Usury Rates for Savings and Loan Associations.

The meeting was adjourned at 2:50 p.m.

Prepared by William G. Wolff

Approved by Committee on:

Aug. 16, 1977
(Date)

"A"

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Clinical Psychologist

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Child Development Specialist

June 29, 1977

Senator Neil Arasmith, Chairman
Special Committee on Finance
and Financial Institutions
Statehouse
Topeka, Kansas

Additional Testimony from the
Kansas Psychological Association

Dear Senator Arasmith,

Yesterday in my testimony on behalf of The Kansas Psychological Association before your committee, a committee member questioned me regarding the effect of some out-of-state insurance companies not paying for mental health benefits to which employees are seemingly entitled in certain circumstances. Kansas law (1974) requires any Kansas insurance company to pay benefits to both psychologists and psychiatrists if it pays to either. Many states now have this provision but a number still do not.

This is unfortunate is many ways, not all of which I thought to mention, and I feel it is important that your committee be aware of this, both to correct the existing situation and to prevent further exclusions in any future legislation.

The intent of the current law is to provide citizens with mental health coverage, not only for freedom of choice but also just the plain possibility of using their benefits. Many citizens of Kansas do not have a psychiatrist accessible to them. Sometimes there are particular kinds of problems, such as problems with children or other specialized problems, which particular psychiatrists do not treat but which an available psychologist may be able to serve. Thus the person may be unduly restricted by chance or location from the use of benefits to which they are entitled, and for which they have paid. In our practice, a number of times people have been surprized to find that they would not get the benefits they were led to assume they have. In one fortunate case in our experience, a union employee was able to change his union's insurance carrier to one which was not so restrictive.

If the retention of such exclusions save money for the carrier, then it is at the expense of providing Kansas citizens with services.

Moreover, if money were to be saved by such a practice, it would not only deprive Kansas citizens of benefits, but it would also deprive Kansas health insurance carriers of a competitive position regarding costs of policies in relation to their out-of-state competitors. Out-of-state carriers can comply with enough Kansas requirements to sell insurance but not have to meet all the requirements a Kansas insurance company would meet.

Atch. A

The Kansas Psychological Association appreciates your hearing our testimony and we hope your committee will act favorably.

Sincerely,

Robert L. Procter, Ph.D.

Robert L. Procter, Ph.D.
for The Kansas Psychological Association

RLP:pb

Enclosed: Copies for Committee Members and Staff

BILL NO.

By Special Committee on Commercial and Financial Institutions

Re Proposal No. 13

AN ACT relating to insurance; concerning reimbursement or indemnity for services rendered in the treatment of alcoholism, drug abuse, and nervous and mental conditions; amending K.S.A. 1977 Supp. 40-2,105, 40-1809 and 40-1909 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1977 Supp. 40-2,105 is hereby amended to read as follows: 40-2,105. Every insurer, which issues any group policy of accident and sickness, medical or hospital expense insurance which provides for reimbursement or indemnity for services rendered to a person covered by such policy in a medical care facility, must make available by affirmative offer and, if requested by the contract holder, provide reimbursement or indemnity under such policy which shall be limited to not less than thirty (30) days per year when such person is confined ~~in either a licensed hospital~~ for ~~the~~ treatment of alcoholism, drug abuse or nervous or mental conditions in a medical care facility licensed under the provisions of K.S.A. 1977 Supp. 65-429 or a treatment facility for alcoholics licensed under the provisions of K.S.A. 1977 Supp. 65-4014 ~~for the treatment of alcoholism~~, a treatment facility for drug abusers licensed under the provisions of K.S.A. 1977 Supp. 65-4605, a community mental health center licensed under the provisions of K.S.A. 75-3307b or a psychiatric hospital licensed under the provisions of K.S.A. 75-3307b. Such policy shall also provide reimbursement or indemnity of costs of treatment of such person for alcoholism, drug abuse or nervous or mental conditions, limited to not less than one hundred percent (100%) of the first two hundred fifty dollars ($250) and eighty

Atch. B

percent (80%) of the next one thousand two hundred fifty dollars ~~($1,250) in any year, in~~

(enumeration of facilities)

when confinement therein is not necessary for said treatment.

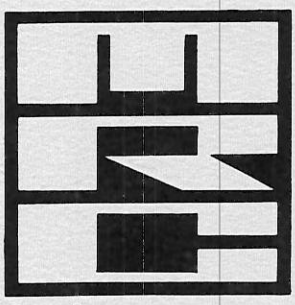
Sec. 2. K.S.A. 1977 Supp. 40-1809 is hereby amended to read as follows: 40-1809. Such corporations shall be subject to the provisions of ~~K.S.A. 1977 Supp. 40-2,105 and to~~ K.S.A. 40-215, 40-216, 40-218, 40-219, 40-222, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-254, 40-2a01 to 40-2a19, inclusive, and 40-2401 to 40-2421, inclusive, and amendments thereto, and K.S.A. 1977 Supp. 40-214, 40-223, 40-252, 40-2,102, 40-2,105, as amended, 40-2216 to 40-2220, inclusive, and 40-3301 to 40-3313, inclusive, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

Sec. 3. K.S.A. 1977 Supp. 40-1909 is hereby amended to read as follows: 40-1909. Such corporations shall be subject to the provisions of ~~K.S.A. 1977 Supp. 40-2,105 and to~~ K.S.A. 40-215, 40-216, 40-218, 40-219, 40-222, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-254, 40-2,100, 40-2,101, 40-2a01 to 40-2a19, inclusive, and 40-2401 to 40-2421, inclusive, and amendments thereto, and K.S.A. 1977 Supp. 40-214, 40-223, 40-252, 40-2,102, 40-2,104, 40-2,105, as amended, 40-2216 to 40-2220, inclusive, and 40-3301 to 40-3313, inclusive, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

Sec. 4. K.S.A. 1977 Supp. 40-2,105, 40-1809 and 40-1909 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

C



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January-February, 1977

Atch. C'

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About this Handbook . . .

Three subjects are covered: Truth in Lending (which includes Fair Credit Billing and Consumer Leasing), Equal Credit Opportunity, and Fair Credit Reporting. The section in the handbook covering each of those subjects is identified by a numbered index. Within each section, where regulations have been issued, those are presented first, followed by the statute, official agency interpretations, and staff opinions, in that order. Each regulation is cross indexed with the staff opinion letters issued under that regulation using numbers shown in red. For example, the first index covers "Truth in Lending"; the numbers 1, 3 shown in red at the end of §226.1(b)(1) refers to staff opinion letters numbered 1, 3 on page . Footnotes shown in black are official regulation footnotes reproduced on that same page.

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Effective July 1, 1969 * Including Amendments through September 15, 1976

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, as amended (15 U.S.C. § 1601 et seq.). Except as otherwise provided herein, this Part, within the context of its related provisions, applies to all persons who are creditors, as defined in paragraph(s) of § 226.2, and in the case of consumer leases, as defined in paragraph (mm) of § 226.2, to all persons who are lessors, as defined in paragraph (oo) 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 and consumer lease terms must comply with specific requirements, and certain credit terms may not be advertised unless the creditor usually and customarily extends such terms. This Part also contains prohibitions against the issuance of unsolicited credit cards and limits on the cardholder's liability for unauthorized use of a credit card. In addition, this Part is designed to assist the customer to resolve credit billing disputes in a fair and timely manner, to regulate certain billing and credit card practices, and to strengthen the legal rights of consumers. This Part is also designed to assure that lessees of personal property are given meaningful disclosures of lease terms, to delimit the ultimate liability of lessees in leasing personal property and to require meaningful and accurate disclosures of lease terms in advertisements. 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 that 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 and credit card issuers and lessors is assigned to the Comptroller of the Currency, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly through the Federal Savings and Loan Insurance Corporation), Administrator of the National Credit Union Administration, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, and Board of Governors of the Federal Reserve System.[1,3]

(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.

(c) **Penalties and liabilities.** Section 112 of the Act provides criminal liability for willful and knowing failure to comply with any requirement imposed under the Act and this Part. Section 134 provides for criminal liability for certain fraudulent activities related to credit cards. Section 130 provides for civil liability in individual or class actions for any creditor or lessor who fails to comply with any requirement imposed under Chapter 2, Chapter 4 or Chapter 5 of the Act and the corresponding provisions of this Part. Section 130 also provides creditors or lessors a defense against civil and criminal liability under Sections 130 and 112 for any act done or omitted in good faith in conformity with the provisions of this Part or any interpretation thereof by the Board, or with any interpretations or approvals issued by a duly authorized official or employee of the Federal Reserve System, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation or approval is amended, rescinded or otherwise determined to be invalid for any reason. Section 130 further provides that a multiple failure to disclose in connection with a single account or single consumer lease shall permit but a single recovery. Section 115 provides for civil liability for an assignee of an original creditor where the original creditor has violated the disclosure requirements and such violation is apparent on the face of the instrument assigned, unless the assignment is involuntary. Section 185(b) provides for civil liability under § 130 for any lessor who fails to comply with any requirement imposed under § 184 to any person who suffers actual damage from the violation. Pursuant to § 108 of the Act, violations of the Act or this Part constitute violations of other Federal laws which may provide further penalties.

(d) (1) Any request for formal Board interpretation or official staff interpretation of Regulation Z must be addressed to the Director of the Office of Saver and Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Each request for interpretation must contain a complete statement, signed by the person making the request or a duly authorized agent, of all relevant facts of the transaction or credit arrangement relating to the request. True

*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.

copies of all pertinent documents must be submitted with the request. The relevance of such documents must, however, be set forth in the request and the documents must not merely be incorporated by reference. The request must contain an analysis of the bearing of the facts on the issues and it must specify the pertinent provisions of the statute and regulation. Within fifteen business days of receipt of the request, a substantive response will be sent to the person making the request or an acknowledgment will be sent which sets a reasonable time within which a substantive response will be given.

(2) Any request for reconsideration of an official staff interpretation of Regulation Z must be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, within thirty days of the publication of such interpretation in the *Federal Register*. Each request for reconsideration must contain a statement setting forth in full the reasons why the person making the request believes reconsideration would be appropriate, and must specify and discuss the applicability of the relevant facts, statute and regulations. Within fifteen business days of receipt of such request for reconsideration, a response granting or denying the request will be sent to the person making the request, or an acknowledgment will be sent which sets a reasonable time within which such response will be given.

(3) Designation of official to issue interpretations. Pursuant to § 130(f) of the Act, the Board has designated the Director and other officials of the Office of Saver and Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this Part. This designation shall not be interpreted to include authority to approve particular creditors' forms in any manner.

(4) The type of interpretation issued will be determined by the Board and the designated officials by the following criteria:

(i) Official Board interpretations will be issued upon those requests which involve potentially controversial issues of general applicability dealing with substantial ambiguities in this Part and which raise significant policy questions.

(ii) Official staff interpretations will be issued upon those requests which, in the opinion of the designated officials, require clarification of technical ambiguities in this Part or which have no significant policy implications.

(iii) Unofficial staff interpretations will be issued where the protection of § 130(f) of the Act is neither requested nor required, or where time strictures require a rapid response.

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) **"Accepted credit card"** means any credit card which the cardholder has requested or applied for and received, or has signed, or has used, or has authorized another person to use for the purpose of obtaining money, property, labor, or services on credit. Any credit card issued in renewal of, or in substitution for, an accepted credit card becomes an accepted credit card when received by the cardholder whether such card is issued by the same or a successor card issuer.[134, 135, 148]

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

(c) **"Adequate notice"** means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning.

(d) **"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.

(e) **"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, vitacultural, 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.

(f) **"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.

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

(h) **"Arrange for the extension of credit or for lease of personal property"** means to provide or offer to provide consumer credit or a lease which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit or lease

(1) receives or will receive a fee, compensation, or other consideration for such service, or

(2) has knowledge of the credit or lease terms and participates in the preparation of the contract documents required in connection with the extension of credit or the lease.

It does not include honoring a credit card or similar device where no finance charge is imposed at the time of that transaction.[10, 51, 171]

(i) **"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 four days from the regular date.[33]

(j) **"Billing error"** means:[157, 159]

(1) A reflection on or with a periodic statement of an extension of credit which (i) was not made to the customer, or (ii) was made to a person who did not have actual, implied, or apparent authority of the customer to use the account and from which use the customer received no benefit, or (iii) if made, was misidentified, insufficiently identified, or was not in the amount indicated or on the date specified on or with the periodic statement, or

(2) A reflection on a periodic statement of an extension of credit or indebtedness for which the customer requests explanation or clarification, including requests for copies of documentary evidence of the indebtedness reflected thereon[164] or

(3) A reflection on a periodic statement of an extension of credit for property or services not accepted by the customer or his designee, or not delivered to the customer or his designee in accordance with any agreeement made in connection with the transaction[1] [167] or

(4) Any failure to properly reflect, on a periodic statement, a payment or other credit to the customer's account, or

(5) A computational error or similar error of an accounting nature made by the creditor on a periodic statement, including errors in computing finance charges, late payment charges, or other charges, or

(6) A failure to mail or deliver a customer's periodic statement to his current designated address, if the creditor has received notification of any change of address at least 10 days prior to the closing date of the billing cycle for which the periodic statement was incorrectly mailed or delivered.

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

(l) **"Card issuer"** means any person who issues a credit card, or the agent of such person with respect to such card.[13, 161, 170]

(m) **"Cardholder"** means any person to whom a credit card is issued for personal, family, household, agricultural, business, or commercial purposes, or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person for such purposes.[143]

(n) **"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.

(o) **"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.

(p) **"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. "Consumer loan" is one type of "consumer credit."[2, 4, 5, 6, 8, 9, 11, 85]

(q) **"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.[2, 8] (See also paragraph (jj) of this section.)

(r) **"Credit card"** means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.[131, 139, 144, 147, 140, 152]

(s) **"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, which is payable by agreement in more than four installments, or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise. For purposes of the requirements of § § 226.7(a)(6), (7), (8), and (9); 226.7(b)(1)(i), (ii), (iii), (ix), and (x); 226.7(b)(2); 226.7(c), (d), (f), (g), (h), and (i); 226.13; and 226.14, the term "creditor" shall also include card issuers, whether or not the payment of a finance charge is or may be required. For purposes of the requirements of § § 226.4(i) and 226.13(k) the term "creditor" shall include any person who honors a credit card.[10, 11, 19, 30, 51, 82, 128, 161, 167, 170]

(t) **"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.[109]

(u) **"Customer"** means (1) a cardholder or (2) 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.

(v) **"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.

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

(x) **"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 installments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. For purposes of the requirements of §§ 226.7(a)(6), (7), (8), and (9); 226.7(b)(1)(i), (ii), (iii), (ix), and (x); 226.7(b)(2); 226.7(c), (d), (f), (g), (h), and (i); 226.13 (i), (j), and (k); and 226.14, the term includes consumer credit extended on an account by use of a credit card, whether or not a finance charge may be imposed. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.[19, 30, 31, 34, 42, 44, 54, 56, 59, 81, 82, 160, 161, 170, 171]

[1] The delivery of property or services different from that described in any agreement, the delivery of the wrong quantity, late delivery, or delivery to the wrong location shall be considered to be a billing error subject to this paragraph, but any dispute with respect to the quality of property in the physical possession of the customer or services performed for the customer shall not be considered to be a billing error under this paragraph.

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

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

(aa) **"Periodic rate"** means a percentage rate of finance charge which is or may be imposed by a creditor against a balance for a period. (See also § 226.5(a)(3).)

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

(cc) **"Proper written notification of a billing error"** is any written notification (other than notice on a payment medium or other material accompanying the periodic statement if the creditor so stipulates in the disclosure required by § 226.7(a)(9), (d), and (i)) received at the address disclosed under § 226.7(b)(1)(x) within 60 days of the first mailing or delivering to the customer's current designated address (as required in § 226.7(b)) of the periodic statement on which the disputed item(s) or amount(s) is reflected in which the customer

(1) Sets forth or otherwise enables the creditor to identify the name and account number (if any) of the customer,

(2) Indicates the customer's belief that the periodic statement contains a billing error and the suspected amount of such error,[164, 167] and

(3) Sets forth the reasons for such belief, to the extent applicable or known by the customer.[164, 167]

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

(ee) **"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.[114]

(ff) **"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 gesides or expects to reside.

(gg) **"Security interest"** and **"security"** means 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.[113]

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

(ii) **"Unauthorized use"** means the use of a credit card by a person other than the cardholder

(1) who does not have actual, implied, or apparent authority for such use, and

(2) from which the cardholder receives no benefit.

(jj) 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"[92, 101, 110] and "lease" to mean "consumer lease."

(kk) A transaction shall be considered consummated at the time a contractual relationship is credited between a creditor and a customer or a lessor and lessee irrespective of the time of performance of either party.[92, 101, 110]

(ll) 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.

(mm) **"Consumer lease"** means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family or household purposes, for a period of time exceeding four months, for a total contractual obligation not exceeding $25,000, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. It does not include a lease which meets the definition of a credit sale in § 226.2(t), nor does it include a lease for agricultural, business or commercial purposes or one made to an organization.

(nn) **"Lessee"** means a natural person who leases under, or who is offered, a consumer lease.

(oo) **"Lessor"** means a person who in the ordinary course of business regularly leases, offers to lease or arranges for the leasing of personal property under a consumer lease.

(pp) **"Personal property"** means any property which is not real property under the law of the State where it is located at the time it is offered or made available for lease.

(qq) **"Realized value"** means (1) the price received by the lessor for the leased property at disposition, (2) the highest offer for disposition, or (3) the fair market value at the end of the lease term.

(rr) **"Total lease obligation"** equals the total of (1) the scheduled periodic payments under the lease, (2) any nonrefundable cash payment required of the lessee or agreed upon by the lessor and lessee or any trade-in allowance made at consummation, and (3) the estimated value of the leased property at the end of the lease term.

(ss) **"Value at consummation"** equals the cost to the lessor of the leased property including, if applicable, any increase or markup by the lessor prior to consummation.

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 security 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[1a] 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.

(e) **Agricultural credit transactions.** Credit transactions primarily for agricultural purposes, including real property transactions, in which the amount financed[1b] 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.

(f) **Certain lease transactions.** Lease transactions of personal property which are incident to the lease of real property and which provide that (1) the lessee has no liability for the value of the property at the end of the lease term except for abnormal wear and tear, and (2) the lessee has no option to purchase the leased property.

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:[14, 15, 16, 17, 19, 30, 32, 51, 99]

(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] [71]

(3) Loan fee, points, finder's fee, or similar charge.[141]

(4) Fee for an appraisal, investigation, or credit report.[20, 56]

(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;[60] and

(ii) any customer desiring such insurance coverage gives specifically dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance.[45, 58, 72, 96]

(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] [56, 96, 99, 108]

(7) Premium or other charge for any other guarantee or insurance protecting the creditor against the customer's default or other credit loss.[108]

(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.[141]

(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.[18, 108]

(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

[1a] 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.

[1b] 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.

actual unanticipated late payment, delinquency, default or other such occurrence.[19]

(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.[150, 170]

(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:[141]

(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.** Oblgations 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.

(i) **Discounts for payments in cash.**[160, 161, 171] (1) Notwithstanding any other provision of this section, a discount which a creditor offers, allows, or otherwise makes available for the purpose of inducing payments for a purchase by cash, check, or similar means rather than by use of an open end credit card account, whether or not a credit card is physically used, is not a finance charge, Provided that:

(i) Such discount does not exceed five per cent when computed or expressed as a percentage of the tag, posted, or advertised price of the property or services which are the subject of the transactions,[23]

(ii) Such discount is available to all prospective buyers, whether or not they are cardholders, and such fact is clearly and conspicuously disclosed by a sign or display posted at or near each public entrance to the seller's place of business wherein such discount is offered, and at all locations within the place of business where a purchase may be paid for,[21, 22, 23, 107] and

(iii) If an offer of property or services is advertised in any medium or if offers are invited or accepted through the mail, over the telephone, or by means other than personal contact between the customer and the creditor offering such a discount, and if customers are allowed to pay by use of a credit card or its underlying account and such facts is disclosed in the advertisement, telephone contact, or in other correspondence, the availability of a discount for payments in cash must be clearly and conspicuously disclosed in any advertisement for such offerings and, in any case, before the transaction has been completed by use of the credit card or its underlying account.

(2) With respect to any such discount for cash which is greater than five per cent, the total amount of such discount shall constitute a finance charge under § 226.4(a) to be disclosed in accordance with § 226.7(3).

(3) The availability of any discount may be limited by the creditor offering such discount to certain types of property or services or to certain outlets maintained by that creditor provided that such limitations are clearly and conspicuously disclosed.

(4) Notwithstanding anything contained in the foregoing paragraph to the contrary, any amount added to the tag, posted, or advertised price of property or services offered by a creditor which is imposed by such creditor as a condition or consequence of the use of the credit card with respect to a transaction involving such property and services, shall be a finance charge subject to the requirements of this section and § 226.7(e).

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 one 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 imposed during the billing cycle is or includes

(i) any minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which applicable and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year;[52, 56] or

(ii) any charge with respect to any specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which any finance charge was imposed during the billing cycle without duplication and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year,[5a] except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year;[52, 56] or

(iii) any minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of subdivision (i) and (ii) of this subparagraph.[80]

(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 acturial method of computation so that it may be disclosed with an accuracy at least to the nearest quarter of one 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.[24]

(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 one 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 trans-

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[5a] In determining the denominator of the fraction under § 226.5(a)(3)(ii) 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 of determining the balance to which a periodic rate is applied, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance—none.

A specific transaction of $100 occurs 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 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 credits) 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 1⅓% x 12 = 20%.

actions 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 one 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 eight 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 eight 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 then 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, either or both of the following:

(i) The amount of one 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 five days for an obligation otherwise payable in weekly installments, not less than 10 days for an obligation otherwise payable in biweekly or semimonthly installments, or not less than 20 days for an obligation otherwise payable in monthly installments.

(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 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, either or both of the following

(i) The amount of one 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 six days for an obligation otherwise payable in weekly installments, not less than 12 days for an obligation otherwise payable in biweekly or semimonthly installments, or not less than 25 days for an obligation otherwise payable in monthly installments.

(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. Except with respect to the requirements of § 226.10, 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 and all numerical amounts and percentages shall be stated in figures and shall be printed in not less

than the equivalent of ten point type, .075 inch computer type, or elite size typewritten numerals, or shall be legibly handwritten.[26, 29, 43, 67, 104]

(b) **Inconsistent State requirements.** (1) With respect to the requirements of 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:

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

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

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

(2)(i) A State law with respect to credit billing practices which is similar in nature, purpose, scope, intent, effect, or requisites to the provisions of sections 161 or 162, or both, of the Act is inconsistent with the Act and this Part within the meaning of section 171(a) of the Act, and is preempted, if it provides procedures or imposes rights or responsibilities upon either customers or creditors which are different from those required by sections 161 or 162, or both, of the Act and their implementing provisions in this Part; except that, any such State law which allows a customer to make inquiry concerning an open end credit account and imposes upon the creditor an obligation to respond to such an inquiry after the time allowed in this Part for the customer to submit a proper written notification of a billing error shall not be preempted as to any situation in which the time period for making a proper written notification of a billing error as provided in this Part has expired.[157]

(ii) A State law which is similar in nature, purpose, scope, intent, effect, or requisites to a section of chapter 4 of the Act other than sections 161 or 162 is not inconsistent with the Act or this Part within the meaning of section 171(a) of the Act if the creditor can comply with the State law without violating this Part. If the creditor cannot comply with a State law without violating a provision of this Part which implements a section of chapter 4 of the Act other than sections 161 or 162, such State law is inconsistent with the requirements of the Act and this Part within the meaning of section 171(a) of the Act and is preempted.

(iii) A State law which requires disclosure or notification to customers of provisions of State law which are inconsistent with chapter four of the Act and its implementing provisions in this Part within the meaning of section 171(a) of the Act is inconsistent with the Act and this Part within the meaning of sections 111(a) and 171(a) of the Act, and the creditor shall not make such a disclosure or provide such a notice. When a creditor gives written notice to a customer of the customer's rights under any provision of State law which would permit a customer to inquire concerning an open end credit account after the time period allowed in this Part for submission of a proper written notification of a billing error has expired, the creditor shall clearly and conspicuously set forth in the notice that reliance upon the longer time period available under State law may result in the customer losing important rights which could be preserved by acting more promptly under Federal law and the State law provisions only become operative upon the expiration of the time period provided by this Part for submitting a proper written notification of a billing error. If such a disclosure is made on the same side of a sheet of paper as the disclosures required by § 226.7(a), (d), and (i) of this Part, such State disclosures shall appear separately and below the disclosures required by § 226.7(a), (d), and (i) of this Part; the disclosures required by § 226.7(a), (d), and (i) shall be clearly and conspicuously identified by a heading indicating they are made in compliance with Federal law and the disclosures of State law shall appear separately and below a conspicuous demarcation line.

(iv) A State, through its Governor, Attorney General, or other appropriate official having primary enforcement or interpretive responsibilities for its credit billing practices law, may apply to the Board for a determination that the State law offers greater protection to customers than a comparable provision(s) of chapter four of the Act and its implementing provision(s) in this Part, or is otherwise not inconsistent with chapter four of the Act and this Part, or for a determination with respect to any issues not clearly covered by § 226.6 (b)(2)(i), (ii), and (iii) as to the consistency or inconsistency of a State law with chapter four of the Act or its implementing provisions in this Part.

(3) (i) A State law which is similar in nature, purpose, scope, intent, effect or requisites to a section of chapter five of the Act is not inconsistent with the Act or this Part within the meaning of § 186(a) of the Act if the lessor can comply with the State law without violating this Part. If a lessor cannot comply with a State law without violating a provision of this Part which implements a section of chapter five of the Act, such State law is inconsistent with the requirements of the Act and this Part within the meaning of § 186(a) of the Act and is preempted.

(ii) A State, through its Governor, Attorney General, or other appropriate official having primary enforcement or interpretative responsibilities for its consumer leasing law, may apply to the Board for a determination that the State law offers greater protection and benefit to lessees than a comparable provision(s) of chapter five of the Act and its implementing provision(s) in this Part, or is otherwise not inconsistent with chapter five of the Act and this Part, or for a determination with respect to any issues not clearly covered by § 226.6(b)(3)(i) as to the consistency or inconsistency of a State law with chapter five of the Act or its implementing provisions in this Part.

(c) **Additional information.** At the creditor's option, or lessors, 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 lessee or contradict, obscure, or detract attention from the information required by this Part to be disclosed.[105, 153] Any creditor or lessor who elects to make disclosures specified in any provision of the State law which, under paragraph (b) of this section, is inconsistent with the requirements of the Act and this Part may[123]

(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 or lessors; joint disclosure.** If there is more than one creditor or lessor in a transaction, each creditor or lessor 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 or lessee. If two or more creditors or lessors make a joint disclosure, each creditor or lessor 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[10, 51, 109, 141] and paragraph (b) of § 226.15.

(e) **Multiple customers or lessees; disclosure to one.** In any transaction other than a credit transaction which may be rescinded under the provisions of § 226.9, if there is more than one customer or lessee, the creditor or lessor 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.[12]

(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 or lessor and the creditor or lessor has made a reasonable effort to ascertain it, the creditor or lessor 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 or lessor and is not used for the purpose of circumventing or evading the disclosure requirements of this Part.[99]

Notwithstanding the requirement of this paragraph that the estimate be based on the best information available, a lessor is not precluded in a purchase option lease from understating the estimated value of the leased property at the end of the term in computing the total lease obligation as required in § 226.15 (b)(15)(i).

(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.[6] [82, 141]

(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.[141]

(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 or lessor for a period of not less than two years after the date each disclosure is required to be made. Each creditor or lessor 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.[27]

(j) **Leap year.** Any variance in the amount of any finance charge, payment, percentage rate, or other term required under this Part to be disclosed, or stated in any advertisement, which occurs by reason of the addition of February 29 in each leap year, may be disregarded, and such term may be disclosed or stated without regard to such variance.

(k) **Transition period.** Any creditor who can demonstrate that he has taken bona fide steps, prior to October 28, 1975, to obtain printed forms which are necessary to comply with the requirements of this Part may, until such forms are received but in no event later than April 30, 1976, utilize existing supplies of printed forms for the purpose of complying with the disclosure requirements of this Part, 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 in every case except:

(1) Where a creditor has, prior to October 28, 1975, prepared the § 226.7(a) disclosures without the notice and statement required by § 226.7(a)(9) and dispersed them to remote locations, as in the case of mail order catalogs, the statement required by § 226.7(a)(9) may be made separately from the other § 226.7(a) disclosures until April 30, 1976, so long as the § 226.7(a)(9) statement is mailed or delivered to the customer no later than the date the first payment is due. For the purpose of this paragraph the creditor may disregard the required notice in § 226.7(a)(9) until April 30, 1976;[28]

(2) Where a creditor's forms must be adapted to comply with the disclosure requirements of § 226.7(b)(1)(x), the creditor need not supplement or alter his forms if there is only one address listed on or with the periodic statement. In the case where a creditor has more than one address listed on or with the periodic statement and the creditor has not complied with the requirements of § 226.7(b)(1)(x), the creditor must accept as properly received any proper written notification of a billing

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

error at any of the addresses listed on or with the periodic statement. New forms which comply with the requirements of § 226.7(b)(1)(x) must be in use no later than April 30, 1976;[67]

(3) Where a creditor's forms must be adapted to comply with the disclosure requirements of § 226.7(g), the creditor need not supplement or alter his forms; however, complying forms must be in use no later than April 30, 1976;[166]

(4) Where a creditor is disclosing inconsistent State law provisions within the meaning of section 171(a) of the Act and § 226.6(b)(2) of this Part or is making disclosures not in compliance with § 226.6(b)(2)(iii) on or with the disclosure required by this Part, the creditor need not alter or supplement his forms; however, complying forms must be in use no later than April 30, 1976; and

(5) Where, because of operational limitations, a creditor is unable to comply with the disclosure requirements in § 226.7(b)(1)(i) and (ix), which require appropriate identification of credit balances, or with the disclosure requirement in § 226.7(b)(1)(iii), which requires the dates of payments and credits, the creditor need not supplement or alter his forms; however, complying forms and procedures must be in use no later than April 30, 1976.

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:[36, 40, 72, 142, 145, 146, 149]

(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, except that the creditor may, at his option and without disclosure, refrain from imposing such finance charge even though payment is received after the termination of such time period.[129]

(2) The method of determining the balance upon which a finance charge may be imposed.[74]

(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.[39, 43, 56]

(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.[6a] [42, 43, 53, 54]

(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.[56, 58, 71, 72, 167]

(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.[56, 79, 158]

(8) The minimum periodic payment required.[45, 54]

(9) The following notice: "NOTICE: See accompanying statement for important information regarding your rights to dispute billing errors" and a separate statement containing substantially the following text,[6b] as applicable, written clearly and conspicuously, shall accompany the statement required by paragraph (a) of this section; or the following text without the preceding notice may be included on the statement required by paragraph (a) of this section if disclosed clearly and conspicuously; or the following text may be included on the reverse side of the statement required by paragraph (a) of this section with the following notice on the face of the statement: "NOTICE: See reverse side for important information regarding your rights to dispute billing errors."[29, 62, 76, 153, 167]

IN CASE OF ERRORS OR INQUIRIES ABOUT YOUR BILL

The Federal Truth in Lending Act requires prompt correction of billing mistakes.

1. If you want to preserve your rights under the Act, here's what to do if you think your bill is wrong or if you need more information about an item on your bill:

a. Do not write on the bill. On a separate sheet of paper write [Alternate: *Write on the bill or other sheet of paper] (you may telephone your inquiry but doing so will not preserve your rights under this law) the following:*

i. Your name and account number (if any).

ii. A description of the error and an explanation (to the extent you can explain) why you believe it is an error. If you only need more information, explain the item you are not sure about and, if you wish, ask for evidence of the charge such as a copy of the charge slip. Do not send in your copy of a sales slip or other document unless you have a duplicate copy for your records.

iii. The dollar amount of the suspected error.

iv. Any other information (such as your address) which you think will help the creditor to identify you or the reason for your complaint or inquiry.

b. Send your billing error notice to the address on your bill which is listed after the words: "Send Inquiries To:" or similar wording. [Alternate: *Send your billing error notice to: (creditor's name and address).]*

Mail it as soon as you can, but in any case, early enough to reach the creditor within 60 days after the bill was mailed to you. If you have authorized your bank to automatically pay from your checking or savings account

[6a] A creditor imposing minimum charges is not required to adjust the disclosure of the range of balances to which each periodic rate would apply in order to reflect the range of the balances below which the minimum charge applies. If a creditor does not impose a finance charge when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact or the balance below which no such charge will be imposed.

[6b] Wherever the word "creditor" appears or is referred to in the statement, the creditor may substitute appropriate references, such as "company," "bank," "we" or a specific name.

any credit card bills from that bank, you can stop or reverse payment on any amount you think is wrong by mailing your notice so the creditor receives it within 16 days after the bill was sent to you. However, you do not have to meet this 16-day deadline to get the creditor to investigate your billing error claim.

2. The creditor must acknowledge all letters pointing out possible errors within 30 days of receipt, unless the creditor is able to correct your bill during that 30 days. Within 90 days after receiving your letter, the creditor must either correct the error or explain why the creditor believes the bill was correct. Once the creditor has explained the bill, the creditor has no further obligation to you even though you still believe that there is an error, except as provided in paragraph 5 below.

3. After the creditor has been notified, neither the creditor nor an attorney nor a collection agency may send you collection letters or take other collection action with respect to the amount in dispute; but periodic statements may be sent to you, and the disputed amount can be applied against your credit limit. You cannot be threatened with damage to your credit rating or sued for the amount in question, nor can the disputed amount be reported to a credit bureau or to other creditors as delinquent until the creditor has answered your inquiry. However, you remain obligated to pay the parts of your bill not in dispute.

4. If it is determined that the creditor has made a mistake on your bill, you will not have to pay any finance charges on any disputed amount. If it turns out that the creditor has not made an error, you may have to pay finance charges on the amount in dispute, and you will have to make up any missed minimum or required payments on the disputed amount. Unless you have agreed that your bill was correct, the creditor must send you a written notification of what you owe; and if it is determined that the creditor did make a mistake in billing the disputed amount, you must be given the time to pay which you normally are given to pay undisputed amounts before any more finance charges or late payment charges on the disputed amount can be charged to you.

5. If the creditor's explanation does not satisfy you and you notify the creditor ***in writing*** *within* ***ten*** *days after you receive his explanation that you still refuse to pay the disputed amount, the creditor may report you to credit bureaus and other creditors and may pursue regular collection procedures. But the creditor must also report that you think you do not owe the money, and the creditor must let you know to whom such reports were made. Once the matter has been settled between you and the creditor, the creditor must notify those to whom the creditor reported you as delinquent of the subsequent resolution.*

6. If the creditor does not follow these rules, the creditor is not allowed to collect the first $50 of the disputed amount and finance charges, even if the bill turns out to be correct.

7. If you have a problem with property or services purchased with a credit card, you may have the right not to pay the remaining amount due on them, if you first try in good faith to return them or give the merchant a chance to correct the problem. There are two limitations on this right:

a. You must have bought them in your home State or if not within your home State within 100 miles of your current mailing address; and

b. The purchase price must have been more than $50. However, these limitations do not apply if the merchant is owned or operated by the creditor, or if the creditor mailed you the advertisement for the property or services.

(b) **Periodic statements required.** (1) Except in the case of an account which the creditor deems to be uncollectible 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 undisputed debit or credit 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:[12, 57, 59, 78]

(i) The oustanding balance in the account at the beginning of the billing cycle, using the term "previous balance," and in the case of a credit balance, an appropriate identification as such.[68]

(ii) The information required by § 226.7(k)

(iii) The amounts and dates of crediting 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, except that the date of crediting to the customer's account need not be provided if a delay in crediting does not result in the imposition of any finance charges, late payment charges, or other charges for that billing cycle or a later billing cycle.[35, 49, 61, 67]

(iv) 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.[50, 51, 55, 56, 60]

(v) 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), 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. The words "corresponding annual percentage rate," "corresponding nominal annual percentage rate," "nominal annual percentage rate," or "annual percentage rate" (or "rates") may be used to describe the corresponding annual percentage rate. The

[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.

requirements of § 226.6(a) of this Part with respect to disclosing the term "annual percentage rate" more conspicuously than other required terminology shall not be applicable to the disclosure made under this paragraph, although such term or words incorporating such term) may, at the creditor's option, be shown as conspicuously as the terminology required under (b)(1)(vi) of this paragraph. Where a minimum charge may be applicable to the account, the amount of such minimum charge shall be disclosed.[9a] 42, 53, 54

(vi) When a finance charge is imposed during the billing cycle, the annual percentage rate or rates determined under § 226.5(a) using the term "annual percentage rate" (or "rates").

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

(viii) 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 that billing cycle, that fact and the amount of such credits shall also be disclosed. 29, 37, 48, 75

(ix) The closing date of the billing cycle and the outstanding balance in the account on that date, using the term "new balance," and in the case of a credit balance, appropriately identified as such, accompanied by the statement of the date, by which, or the period within which, if any, payment must be made to avoid additional finance charges, except that the creditor may, at his option and without disclosure, impose no such additional finance charges if payment is received after such date or termination of such period. 67, 68

(x) An address to be used by the creditor for the purpose of receiving billing inquiries from customers. Such address shall be preceded by the caption "Send Inquiries to:", or other similar language indicating that the address is the proper location to send such inquiries. 67, 69, 167

(2) If the terms of the open end credit plan provide a time period within which the customer may repay any portion of the new balance without incurring an additional finance charge, late payment charge, or other charge, no such charge may be imposed with respect to any portion of such new balance unless the periodic statement disclosing the new balance is mailed or delivered to the customer at least 14 days prior to the date specified in the statement as being the date by which payment of the new balance must be made in order to avoid the imposition of that finance charge or late payment charge, except that such time limitation shall not apply in any case where the creditor has been prevented, delayed, or hindered in mailing or delivering the periodic statement within such time limit because of an act of God, war, civil disorder, natural disaster, or strike. 67, 168

(c) **Location of disclosures.** The disclosures required by paragraph (b) of this section shall be made on the face of the periodic statement, except that, at the creditor's option:

(1) The information required to be disclosed under paragraph (b)(1)(ii) of this section and itemization of the amounts and dates required to be disclosed under paragraph (b)(1)(iii) of this section and of the amount of any finance charge required to be disclosed under paragraph (b)(1)(iv) of this section may be made on the reverse side of the periodic statement or on a separate accompanying statement(s), provided that the totals of the respective debits and credits under each of those paragraphs are disclosed on the face of the periodic statement.

(2) The disclosures required under paragraph (b)(1)(v) and (b)(1)(viii) of this section, except the disclosure of the balance on which the finance charge was computed, may be made on the reverse side of the periodic statement or on the face of a single supplemental statement which shall accompany the periodic statement. 39

(3) The disclosure required by paragraph (b)(1)(x) of this section may be made on the reverse side of the periodic statement. 69

(4) If the creditor exercises any of the options provided under this paragraph, 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 the disclosures shall not be separated so as to confuse or mislead the customer or to obscure or detract attention from the information required to be disclosed. 41, 57, 73, 168

(d) **Semiannual statement required.** (1) The creditor shall mail or deliver during two billing cycles per year to each customer entitled to receive a periodic statement under § 226.7(b) for such billing cycle, the statement required by § 226.7(a)(9), written clearly and conspicuously either on one or both sides of a separate page or on one or both sides of the periodic statement required by paragraph (b) of this section. 75

(2) The timing of the mailing or delivery of such semiannual statements shall not be less than five nor more than seven months after the month in which the last preceding such statement was mailed or delivered, Provided that:

(i) The creditor shall select at least two billing cycles in any 12 month calendar period for the mailing or delivery of such statements; and

(ii) The first semiannual statement to any new customer may be mailed or delivered to that customer during the next regularly scheduled mailing or delivery of semiannual statements in which he is entitled to receive a semiannual statement under paragraph (d)(1) of this section.

(3) If the creditor chooses to alter the cycle of mailing or delivering semiannual statements, the creditor may mail or deliver the semiannual statement less than five months after the last preceding such statement was mailed or delivered, provided that the credtior mails or delivers at least three such statements in the next 12 months computed from the month in which the last preceding semiannual statement was mailed or delivered.

(4) Nothing in this section shall be construed to prohibit a creditor from mailing or delivering the statement required for

[9a] A creditor imposing minimum charges is not required to adjust the disclosure of the range of balances to which each periodic rate would apply in order to reflect the range of the balances below which the minimum charge applies. If a creditor does not impose a finance charge when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact or the balance below which no such charge will be imposed.

this section more frequently than semiannually.[167]

(5) As an alternative to the requirements of paragraph (d)(1) of this section, the creditor may mail or deliver, on or with each periodic statement required under paragraph (b)(1) of this section, substantially the following statement and, if applicable, the periodic statement must contain one of the notices provided for in paragraph (c)(4) of this section, provided that the creditor must promptly but in no event later than 30 days, mail or deliver to a customer the statement required by § 226.7(a)(9) at any time upon a customer's request and also upon receipt of each billing error notice mailed or delivered to the creditor by a customer:[62, 73, 75, 153, 162]

IN CASE OF ERRORS OR INQUIRIES ABOUT YOUR BILL

*Send your inquiry in writing [*at creditor's option: *on a separate sheet] so that the creditor receives it within 60 days after the bill was mailed to you. Your written inquiry must include:*

1. Your name and account number (if any);

2. A description of the error and why (to the extent you can explain) you believe it is an error; and

3. The dollar amount of the suspected error.

If you have authorized your creditor to automatically pay your bill from your checking or savings account, you can stop or reverse payment on any amount you think is wrong by mailing your notice so that the creditor receives it within 16 days after the bill was sent to you.

You remain obligated to pay the parts of your bill not in dispute, but you do not have to pay any amount in dispute during the time the creditor is resolving the dispute. During that same time, the creditor may not take any action to collect disputed amounts or report disputed amounts as delinquent.

If you have a problem with property or services purchased with a credit card, you may have the right not to pay the remaining amount due on them if you first try in good faith to return them or give the merchant a chance to correct the problem. There are two limitations on this right:

1. You must have bought them in your home State or, if not within your home State, within 100 miles of your current mailing address; and

2. The purchase price must have been more than $50.

However, these limitations do not apply if the merchant is owned or operated by the creditor, or if the creditor mailed you the advertisement for the property or services.

This is a summary of your rights; a full statement of your rights and the creditor's responsibilities under the Federal Fair Credit Billing Act will be sent to you both upon request and in response to a billing error notice.

(e) **Finance charge imposed at the time of transaction.** (1) Any creditor, other than the creditor of the open end credit account, who imposes a finance charge not excepted by § 226.4(i) *Discounts for payments in cash*, at the time of honoring a customer's credit card, shall make the disclosures required under paragraph (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.[171]

(2) The creditor of the open end credit account shall not separately consider any charge imposed under this paragraph for purposes of the disclosure requirements of paragraphs (a) and (b) of this section.

(f) **Change in terms.** Not later than 15 days prior to the beginning date of the billing cycle in which any change is to be made in the terms previously disclosed to the customer of an open end credit account, the creditor shall mail or deliver a written disclosure of such change to each customer required to be furnished a statement under paragraph (b) of this section. Such disclosure shall be mailed or delivered to each other customer who subsequently activates his account not later than the date of mailing or delivery of the next required billing statement on his account. However, if the periodic rate or rates, or any minimum, fixed, check service, transaction, activity, or similar charge is increased, the creditor shall mail or deliver a written disclosure of such increase to each customer at least 15 days prior to the beginning date of the billing cycle in which the increase is imposed on his account. No notice is necessary if the only change is a reduction in the minimum periodic payment, periodic rate or rates, or in any minimum, fixed check service, transaction, activity, or similar charge applicable to the account.[33, 38, 46, 47, 64, 146, 153]

(g) **Prompt crediting of payments.** Regardless of the date of actual posting of a payment to an account, such payment shall be credited to the customer's account as of the date such payment is received by the creditor, and no finance charge, late payment charge, or other charge shall be imposed with respect to the amount of such payment which is properly received by the creditor on or before the time indicated by the creditor as necessary to avoid imposition thereof, Provided that:

(1) If a creditor fails to post the customer's payment in time to avoid the imposition of finance charges, late payment charges, or other charges, the creditor shall adjust the customer's account so that the finance charges, late payment charges, or other charges are credited to the account during the customer's next billing cycle.

(2) For the purposes of paragraph (g) of this section the creditor may specify on the periodic statement or on an accompanying material that need not be retained by the customer, reasonable requirements with respect to the form, amount, manner, location, and time for receipt of payments, except that:[29, 70, 166, 167]

(i) If no particular hour of the day has been clearly specified by the creditor as the time by which payment must be received by the creditor in order to obtain crediting to the customer's account as of that date, payments received prior to the closing of business on that day must be credited as of that date;

(ii) If no location(s) has been clearly specified as the location(s) at which payment may be made, then payment at any location where the creditor conducts business shall be credited as of the date such payment is presented;[167] and

(iii) If no particular manner of payment has been clearly specified, then payment by check, cash, money order, bank draft or other similar instrument in properly negotiable form shall constitute proper manner of payment.

(3) If the creditor accepts payment at locations other than those specified under paragraph (g)(2)(ii) of this section, the creditor shall credit the customer's account promptly (in no case later than five days from the date of receipt), provided that the possibility of such delay is clearly disclosed to the customer on the periodic statement or on accompanying material that need not be retained by the customer.[29, 167]

(4) Payments need not be credited as of the date of receipt (but in any case must be credited promptly) if a delay in crediting does not result in the imposition of any finance charges, late payment charges, or other charges for that billing cycle or a later billing cycle.

(5) If, because of operational limitations, the creditor is unable to credit a payment made on an average daily balance or daily balance account as of the date of receipt and there was a "previous balance" in the account for the billing cycle in which such payment was received, or the account is one in which the terms do not provide a time period within which the customer may repay any portion of the new balance without incurring an additional finance charge, late payment charge, or other charge, a creditor may credit such payment promptly (in no case later than five days from the date of receipt) until October 28, 1976.[69, 167]

(h) **Crediting and refunding excess payments.** (1) Whenever a customer mails or delivers payment to the creditor in excess of the new balance (as provided in § 226.7(b)(1)(ix)) to which the payment is to be applied, the creditor shall:

(i) Credit the customer's account with the total amount of the payment as specified in paragraph (g) of this section,[66] or

(ii) Credit the customer's account with an amount equal to the total new balance as specified in paragraph (g) of this section and promptly (in no case later than five business days from the creditor's receipt of the payment) refund the excess amount.

(2) Notwithstanding the provisions of paragraph (h)(1) of this section, if the customer requests in writing a refund of any excess payments, a creditor shall refund any such excess payments, of $1 or more, promptly (in no case later than five business days from receipt of the customer's request).

(3) After crediting a customer's account with the total amount of a payment under paragraph (h)(1)(i) of this section, a creditor may refund any excess payment of any amount, whether or not requested by the customer.[66]

(i) **Open end credit accounts existing on October 28, 1975.** In the case of any open end credit account in existence and in which a balance of more than $1 is outstanding at or after the closing date of the creditor's first full billing cycle after October 28, 1975, and which account is deemed to be collectible and with respect to which delinquency collection procedures have not been instituted, the items described in paragraph (a) of this section, to the extent applicable and not previously required to be disclosed to the customer, shall be disclosed in the form prescribed in paragraph (a) of this section, and mailed or delivered to the customer not later than the time of mailing or delivery of the periodic statement required under paragraph (b) of this section for that billing cycle.[63, 153]

(j) **Supplemental credit devices for use in open end credit accounts.** If, subsequent to 30 days after delivering the disclosures required under paragraph (a) of this section, a creditor of an open end credit account mails or delivers, other than as a renewal or resupply, a blank check, payee designated check, blank draft or order or other similar credit device other than a credit card, to an existing customer or cardholder for use in connection with such account, such device shall be accompanied by a single written statement setting forth clearly and conspicuously those disclosures of paragraph (a) of this section which specifically relate to the use of such device. Such disclosure statement shall either be limited to the disclosures of paragraphs (a)(1), (2), (3), and (4) of this section or contain all disclosures required by such paragraph with the pertinent disclosures clearly and conspicuously referenced on or accompanying that disclosure statement. Such disclosure statement shall not appear on any promotional material mailed or delivered at the same time. The requirements of this paragraph shall not be applicable to checks to be used in conjunction with a checking account even though such checks may also activate a cash advance under an open end credit account.[65, 67]

(k) **Identification of transactions.** (1) Each extension of credit for which an actual copy of the document evidencing the credit transaction (which does not include a so-called "facsimile draft") accompanies the periodic statement on which the transaction is first reflected shall be identified by disclosing on the periodic statement, or on accompanying statement(s) or document(s), the amount of the transaction and, at the creditor's option, either the date of the transaction or the date the transaction is debited to the customer's account.[56, 72, 77]

(2) Each extension of credit for which an actual copy of the document evidencing the credit transaction does not accompany the periodic statement shall be identified by disclosing on or with the periodic statement on which that credit transaction is first reflected at least:

(i) For transactions in which the creditor and the seller are the same person or related persons,[9b] the amount of the transaction, the date on which the transaction took place,[9c] and a brief identification[9d] of any property or services purchased or

[9b]For purposes of paragraph 226.7(k) a person is not related to the creditor simply because the person and the creditor have an agreement or contract pursuant to which the person is authorized to honor the creditor's credit card under the terms specified in the agreement or contract. Franchised or licensed sellers of a creditor's product shall be considered to be related to the creditor for purposes of paragraph 226.7(k). Sellers who assign or sell open end customer sales accounts to a creditor or arrange for such credit under an open end credit plan which allows the customer to use the credit only in transactions with that seller shall be considered related to the creditor for purposes of § 226.7(k).

[9c]With respect to transactions which are not billed in full on any single statement but for which precomputed installments are billed periodically, the date the transaction takes place for purposes of paragraph [2] 226.7(k) shall be deemed to be the date on which the amount is debited to the customer's account.

[9d]For purposes of paragraph § 226.7(k), designations such as "merchandise" or "miscellaneous" shall not be considered sufficient identification of property or services, but a reference to a department in a sales establishment which accurately conveys the identification of the type(s) of property or services which are available in such department shall be sufficient under this paragraph. Identification may be made on an accompanying slip or by symbol relating to an identification list printed on the statement.

an identifying number or symbol reasonably unique for that transaction with that creditor which appears on the document evidencing the transaction given to the customer; provided, that, if the creditor discloses such an identifying number or symbol, the absence of the identification or the property or services otherwise required must be treated as a billing error under § § 226.2(j) and 226.14 and as an erroneous billing under § 226.14(b) if the customer submits a proper written notice of a billing error relating to such absence, and the creditor must provide documentary evidence of the transaction to the customer free of charge whether or not the customer requests it.

(ii) For transactions in which the seller and the creditor are not the same person or related persons, the amount of the transaction, the date on which the transaction took place, and the seller's name and address (city and State or foreign country, using understandable and generally accepted abbreviations if the creditor desires) where the transaction took place.[56, 72, 76, 77]

(3) Notwithstanding the provisions of § § 226.7(k)(1) and 226.7(k)(2), transactions involving nonsale credit, such as a cash advance or an overdraft or other checking plan transactions, shall be identified on or with the periodic statement upon which the transaction is first reflected by providing at least:[69]

(i) An actual copy of the document evidencing the transaction which shows the amount of the transaction and either the date of the transaction, the date the transaction was debited to the customer's account, or the date placed on the document or instrument by the customer (if the customer signed the document or instrument); or

(ii) A description of the transaction, which characterizes it as a cash advance, loan, overdraft loan, or other designation as appropriate, and which includes the amount of the transaction and the date of the transaction[9e] or the date which appears on the document or instrument evidencing the transaction (if the customer signed the document or instrument).

(4) If, despite the maintenance of procedures reasonably adapted to procure the information required by §§ 226.7(k)(1), (2), and (3) such information is unavailable to the creditor, the date of debiting the amount to the account shall be substituted for the date otherwise required (except that the date of debiting need not be provided if an actual copy of the document evidencing the transaction is provided with the periodic statement) and the creditor shall disclose as much of the other required information as is available and omit any information which is not available, provided, that, if the customer submits a proper written notification of a billing error relating to the absence of the primarily required date or other information, such absence shall be treated as a billing error under §§ 226.14(b) and, unless previously furnished with a periodic statement, documentary evidence of the transaction must be furnished whether or not the customer requests it, within the time period allowed in § 226.14 for resolution of a billing error, without charge to the customer.

(5) In any case in which a transaction occurs other than in a State:

(i) The creditor may disclose the date of debiting the amount of the transaction to the open end credit account in place of any other date required elsewhere in § 226.7(k); and

(ii) The provisions of § § 226.7(k)(4) shall apply and the creditor need not maintain procedures reasonably adapted to procure the information otherwise required by § 226.7(k).

(6) In complying with the disclosure requirements of 226.7 (k)(1), (2), (2), (3), or (4):

(i) The creditor may rely upon and disclose the information supplied by the seller with respect to the date and amount of transactions for which the creditor and the seller are not the same person or related persons.[69]

(ii) With regard to disclosing the seller's address where the transaction took place for purposes of § 226.7(k)(2)(ii), the creditor may omit the address or provide an address or other suitable designation which, in the creditor's opinion, will assist the customer in identifying the transaction or in relating the transaction, as reflected, to a document(s) evidencing the transaction previously furnished when no meaningful address is readily available because the transaction took place at a location which is not fixed (for example, aboard a public conveyance), or in the customer's home (in which case "customer's home" or a similar description is sufficient) or because the transaction was the result of a mail or telephone order (in which case "telephone order," "mail order," or similar description is sufficient); provided that any such disclosure made or omitted shall not be for the purpose of circumvention or evasion of this Part.

(iii) With regard to disclosing the seller's name for purposes of § 226.7(k)(2)(ii), disclosure of a seller's name which appears on the document evidencing the transaction (or a more complete spelling of such a name if the name is alphabetically abbreviated on the document evidencing the transaction) is sufficient for purposes of § 226.7(k)(2)(ii).

(7)(i) As an alternative to the provisions of § § 226.7(k)(1) through 226.7(k)(5), from October 28, 1976, until October 28, 1977: (A) the creditor may disclose the date of debiting the amount of the transaction to the customer's account for the date of the transaction or the date placed on the document evidencing a credit transaction if, due to operational limitations, either such date is unavailable to the creditor for purposes of billing; and the creditor may disclose an identifying number or symbol which appears on the document evidencing the credit transaction given to or used by the customer at the time of or in connection with the credit transaction in place of the seller's name and address or description of the property or services purchased if, due to operational limitations, such information is unavailable to the creditor for purposes of billing; or (B) the creditor may identify the transaction by disclosing such information as is reasonably available and treating the absence of the information required by § 227.6(k)(1), (2), or (3), as applicable, as a billing error, as provided in § § 226.2(j) and 226.14. If a customer submits a proper written notification

[9e] In cases in which an amount is debited to a customer's open end credit account under an overdraft checking plan, the date of debiting the open end credit account shall be considered the date of the transaction for purposes of this paragraph.

of a billing error relating to the absence of such information and the information was, in fact, not disclosed as required by § § 226.7(k)(1), (2), or (3), as applicable, the transaction shall be treated as an erroneous billing under § 226.14(b) and documentary evidence of the transaction must be furnished whether or not the customer requests it (despite the provisions of § § 226.2(j) and 226.14(a)(2)), within the time period allowed in § 226.14 for resolution of a billing error, without charge to the customer.

(ii) The effective date of § § 226.7(k)(1) through 226.7(k)(7)(i), inclusive, is October 28, 1976. Until October 28, 1976, the creditor shall disclose the date of each extension of credit or the date such extension of credit is debited to the account during the billing cycle, the amount of such extension of credit and, unless previously furnished, a brief identification[9f] of any goods or services purchased or the extension of credit.

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.[81, 92, 110] 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;[90] 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:[31, 59, 83]

(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,"[98] 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.[98, 109]

(4) The amount, or method of computing the amount, of any default, delinquency, or similar charges payable in the event of late payments.[9, 93, 102, 109]

(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[9, 105, 106, 109]

(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.[95, 109]

(7) Identification of the method of computing any unearned portion of the finance charge in the event of prepayment in full of an obligation which includes precomputed finance charges 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 an obligation or refunded to the customer. If the credit contract does not provide for any rebate of unearned finance charges upon prepayment in full, this fact shall be disclosed.[87, 102, 109]

(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:[59, 83, 97]

(1) The cash price of the property or service purchased, using the term "cash price."[98, 107]

[9f] Identification may be made on an accompanying slip or by symbol relating to an identification list printed on the statement.

[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.

(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."[98]

(3) The difference between the amounts described in subparagraphs (1) and (2) of this paragraph, using the term "unpaid balance of cash price."[98, 109]

(4) All other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge.[91, 96, 99]

(5) The sum of the amounts determined under subparagraphs (3) and (4) of this paragraph, using the term "unpaid balance."[91, 109]

(6) Any amounts required to be deduced under paragraph (e) 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."[91]

(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, using the term "finance charge," and where the total charge consists of two or more types of charges, a description of the amount of each type,[88, 98] and

(ii) The sum of the amounts determined under subparagraphs (1), (4), and (8)(i) of this paragraph, using the term "deferred payment price."[109]

(d) **Loans and other nonsale credit.** In the case of a loan or extension of credit which is not 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:[85]

(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."[25, 96, 100]

(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."[25, 100]

(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] using the term "finance charge," and where the total charge consists of two or more types of charges, a description of the amount of each type.[17, 25, 88]

[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.

(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:[100]

(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:[83]

(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;[84] 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.

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

(h) **Series of sales.** If a credit sale is one of a series of transactions made pursuant to an agreement 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:[84, 86]

(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:[4, 7, 85, 89, 92, 94, 103, 109]

(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 the 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[94, 103]

(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) **Periodic statements.** (1) 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:

(i) The annual percentage rate or rates unless exempted by § 226.8(b)(2), and

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

(2) If the creditor is required to send a periodic statement under paragraph (q) of this section, the requirements of § 226.7(b)(1)(i), (ii), (iii), (ix), and (x), and § 226.7(b)(2) shall be met, as applicable, in addition to the disclosures required by this paragraph.

(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 ten 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.")

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

(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 paragragh, 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.[13a]

(3) In a transaction with multiple discount rates (e.g., 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.[13b]

(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 of 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.[13c]

(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 paragraph (1) of this section 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)(1)(ii), 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.[13d]

(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 under paragraph (c)(8)(i) of this section and the annual percentage rate under paragraph (b)(2) of this section.[13e] 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.[13f]

(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 the 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.

(p) **Agricultural credit—information not determinable.** (1) In any transaction subject to this section, if the amount or date of any advance or payment in connection with an extension of credit for agricultural purposes under a written agreement is to be determined by production, seasonal needs, or similar operational factors, and is not determinable at the time

[13a] 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, at 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.

[13b] 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%.

[13c] 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%.

[13d] 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%.

[13e] 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 installments, the disclosures under § 226.8(b) and (c) would include a cash price of $980 and a finance charge of $120.

[13f] 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%.

of execution of the agreement, disclosures may be made at the creditor's option in accordance with this paragraph, provided the use of this paragraph is not for the purpose of circumvention or evasion of this Part.

(2) If a creditor elects to make disclosures under this paragraph, he shall disclose the following items in accordance with § 226.8(a), which shall constitute compliance with the requirements of § 226.8, and under § 226.9(a) shall constitute "all other material disclosures required under this Part:"

(i) The method of computing the amount of the finance charge including an identification of each component thereof in accordance with § 226.4;

(ii) Any item required to be disclosed under § 226.8(b)(3) which is determinable at the time the disclosures are required to be made under this paragraph;

(iii) The disclosures, as applicable, required under § 226.8(b)(4), (5), (6), and (7) and the items described in § 226.8(e)(1) and (2); and

(iv) The disclosures, as applicable, required under § 226.8(o)(1), (2), (3), (4), (5), (8), and (9).

(3) Disclosures made pursuant to subparagraph (2)(i), (ii), and (iii) of this paragraph need be made only on the agreement or on a separate statement as specified in § 226.8(a).

(4) If a creditor making disclosures pursuant to this paragraph transmits a periodic billing statement of the type described in paragraph (n) of § 226.8, such statement shall be in a form which the customer may retain and shall set forth the date by which, or the period, if any, within which downpayment must be made in order to avoid late payment or delinquency charges.

(q) **Credit card accounts.** In addition to the requirements of this section, consumer credit other than open end which is extended on an account by use of a credit card shall also be subject to the requirements of § § 226.7(a)(6), (7), (8), and (9); 226.7(b)(1)(i), (ii), (iii), (ix), and (x); 226.7(b)(2); 226.7(c), (d), (g), (h), and (i); 226.13(i), (j), and (k); and 226.14.

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 [14] 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. [11, 85, 111, 113, 114, 115]

(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 boldfaced 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 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. Where the real property on which the security interest may arise does not include a dwelling, the creditor may substitute the words "the property you are purchasing" for "your home," or "lot" for "home," where these words appear in the notice.

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 can 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, other than an extension of credit primarily for agricultural purposes, shall not perform, or cause or permit the performance of, any of the following actions until after the

[14] For the purpose of this section, a business day is any calendar day except Sunday and those legal public holidays specified in Section 6103(a) of Title 5 of the United States Code (New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day).

rescission period has expired and he has reasonably satisfied himself that the customer has not exercised his right of rescission: [112]

(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. [112, 116]

(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 three 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. [114]

(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 either:

(i) 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, or

(ii) Paragraph (p) of § 226.8 under a written agreement, provided the disclosure required under paragraph (b) of this section was made at the time the written agreement was executed by the customer.

(5) Any transaction in which an agency of a State is the creditor.

(h) **Time limit for unexpired right of rescission.** In the event the creditor fails to deliver to the customer the disclosures required by this section or the other material disclosures required by this Part, a customer's right to rescind a transaction pursuant to this section shall expire the earlier of (1) three years after the date of consummation of the transaction, or (2) the date the customer transfers all his interest, both equitable and legal, in the property.

SECTION 226.10—ADVERTISING CREDIT TERMS

(a) **General rule.** (1) No advertisement to aid, promote, or assist directly or indirectly any extension of credit may state

(i) That a specific amount of credit or installment amount can be arranged unless the creditor usually and customarily arranges or will arrange credit amounts or installment for that period and in that amount; [119]

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

(b) **Catalogs and multi-page advertisements.** [124] 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 or lease 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 or lease terms appearing in any place other than in that table or schedule of credit or lease 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 or lease 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 a specified downpayment or periodic payment is required (either in dollars or as a percentage), the period of repayment 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:[76, 118, 121, 125]

(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; and

(4) Where one or more periodic rates may be used to compute the finance charge, each corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year and, where there is more than one corresponding annual percentage rate, the range of balances to which each is applicable.[15] [129]

(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 the finance charge except as an "annual percentage rate," using that term. No other rate of finance charge may be stated, except that:[84, 123]

(i) Where the total finance charge includes, as a component, interest computed at a simple annual rate, the simple annual rate may be stated in conjunction with, but not more conspicuously than, the annual percentage rate, or

(ii) Where the finance charge is computed solely by the application of a periodic rate to an unpaid balance, the periodic rate may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(2) That no downpayment is required, or the amount of the downpayment or of any instalment payment required (either in dollars or as a percentage), 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 also clearly and conspicuously sets forth all of the following items in terminology prescribed under § 226.8:[83, 100, 117, 118, 120, 121, 122, 124, 125, 127, 130]

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

(ii) In a credit sale, 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.[84, 123, 126]

(b) 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 in a credit sale, or the total of payments in a loan or other extension of credit which is not a credit sale, as applicable.

(e) **Advertising of FHA Section 235 financing.** Any advertisement to aid, promote, or assist directly or indirectly the sale of residential real estate under Title II, Section 235, of the National Housing Act (12 U.S.C. 1715z) shall clearly identify those credit terms which apply to the assistance program and, except as provided in this paragraph, comply with the provisions of paragraph (d) of this section. No such advertisement shall state:

(1) The amount of any payment scheduled to repay the indebtedness without stating the family size and income level applicable to that amount.

(2) Any rate of a finance charge, or the amount of the finance charge, expressed as an annual percentage rate based on the assistance. The annual percentage rate exclusive of the assistance may be stated, but is not required.

(f) **Credit payable in more than four installments; no identified finance charge.** Any advertisement to aid, promote, or assist directly or indirectly an extension of consumer credit repayable by agreement in more than four instalments shall, unless a specific finance charge is or may be imposed, state clearly and conspicuously: "The cost of credit is included in the price quoted for the goods and services."[128]

(g) **Advertising of consumer leases.** No advertisement to aid, promote or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease unless the advertisement also states clearly and conspicuously each of the following items of information as applicable:

(1) That the transaction advertised is a lease.

(2) The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required.

(3) The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease.

[15] A creditor imposing minimum charges is not required to adjust the disclosure of the range of balances to which each rate would apply in order to reflect the range of the balances below which the minimum charge applies. If a creditor does not impose a finance charge when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact or the balance below which no such charge will be imposed.

(4) A statement of whether or not the lessee has the option to purchase the lease property and at what price and time. The method of determining the price may be substituted for disclosure of the price.

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the lease property and its realized value at the end of the lease term, if the lessee has such liability.

(h) **Multiple-item leases; merchandise tags.** If a merchandise tag for an item normally included in a multiple-item lease sets forth information which would require additional disclosures under § 226.10(g), such merchandise tag need not contain such additional disclosures, provided it clearly and conspicuously refers to a sign or display which is prominently posted in the lessor's showroom. Such sign or display shall contain a table or schedule of those items of information to be disclosed under § 226.10(g).

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 (f) of § 226.7;

(3) Shall, when making such disclosure under the provisions of paragraphs (a)(5) and (b)(1)(vii) 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 Supplements II, IV, V, and VI to Regulation Z, any State may make application to the Board for exemption fo any class of transactions within the State from the requirements of Chapters 2, 4 or 5 of the Act and the corresponding provisions of this Part, provided that:

(1) The Board determines that under the law of that State, that class of transactions is subject to requirements substantially similar to those imposed under Chapter 2 or Chapter 4 of the new Act, or both, or under Chapter 5, and the corresponding provisions of this Part; or in the case of Chapter 4, the consumer is afforded greater protection than is afforded under Chapter 4 of the Act, or in the case of Chapter 5, the lessee is afforded greater protection and benefit than is afforded under Chapter 5 of the Act, and

(2) There is adequate provision for enforcement.

(b) **Procedures and criteria.** The procedures and criteria under which any State may apply for the determination provided for in paragraph (a) of this section are set forth in Supplement II to Regulation Z with respect to disclosure and rescission requirements (sections 121-131 of Chapter 2), Supplement IV with respect to the prohibition of the issuance of unsolicited credit cards and the liability of the cardholder for unauthorized use of a credit card (sections 132-133 of Chapter 2), in Supplement V with respect to fair credit billing requirements (sections 161-171 of Chapter 4) and in Supplement VI with respect to consumer leasing (sections 181-186 of Chapter 5).

(c) **Civil liability.** In order to assure that the concurrent jurisdiction of Federal and State courts created in section 130(e) of the Act shall continue to have substantive provisions to which such jurisdiction shall apply, and generally to aid in implementing the Act with respect to any class of transactions exempted pursuant to paragraph (a) of this section and Supplement II, the Board pursuant to sections 105 and 123 hereby prescribes that:

(1) No such exemptions shall be deemed to extend to the civil liability provisions of sections 130 and 131; and

(2) After an exemption has been granted, the disclosure requirements of the applicable State law shall constitute the disclosure requirements of this Act, except to the extent that such State law imposes disclosure requirements not imposed by this Act. Information required under such State law with the exception of those provisions which impose disclosure requirements not imposed by this Act shall, accordingly, constitute the "information required under this chapter" (chapter 2 of the Act) for the purpose of section 130(a).

(d) **Exemptions granted.** Exemptions granted by the Board to particular classes of credit transactions within specified States are set forth in Supplement III to Regulation Z.

SECTION 226.13—CREDIT CARD TRANSACTIONS—SPECIAL REQUIREMENTS

(a) **Issuance of credit cards.** Regardless of whether a credit card is to be used for personal, family, household, agricultural, business, or commercial purposes, no credit card shall be issued to any person except:

(1) In response to a request or application therefor,[138, 139, 140, 145, 147, 150] or

(2) As a renewal of, or in substitution for, an accepted credit card whether such card is issued by the same or a successor card issuer.[131, 133, 134, 135, 139, 142, 144, 146, 147, 148, 149, 150]

(b) **Conditions of liability of cardholder.** A cardholder shall be liable for unauthorized use of each credit card issued only if

(1) The credit card is an accepted credit card;

(2) Such liability does not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by such use prior to notification of the card issuer pursuant to paragraph (e) of this section;[132, 136, 151]

(3) The card issuer has given adequate notice to the cardholder of his potential liability on the credit card or within 2 years preceding the unauthorized use;[133, 143] and

(4) The card issuer has provided the cardholder with an addressed notification requiring no postage to be paid by the cardholder which may be mailed by the cardholder in the event of the loss, theft, or possible unauthorized use of the credit card.[143]

(c) **Other conditions of liability.** In addition to the conditions of liability in paragraph (b) of this section, no cardholder shall be liable for the unauthorized use of any credit card which was issued after January 24, 1971, and, regardless of the date of its issuance, after January 24, 1972, no cardholder shall be liable for the unauthorized use of any credit card, unless the card issuer has provided a method whereby the use of such card can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint on the credit card or by electronic or mechanical confirmation.[137, 143]

(d) **Notice to cardholder.** The notice to cardholder pursuant to paragraph (b)(3) of this section may be given by printing the notice on the credit card, or by any other means reasonably assuring the receipt thereof by the cardholder. An acceptable form of notice must state that liability shall not exceed $50 (or any lesser amount), that notice of loss, theft, or possible unauthorized use may be given orally or in writing, and the name and address of the party to receive the notice. It may include any additional information which is not inconsistent with the provisions of this section. An example of an acceptable notice is as follows:

"You may be liable for the unauthorized use of your credit card *[or other term which describes the credit device]*. You will not be liable for unauthorized use which occurs after you notify *[name or card issuer or his designee]* at *[address]* orally or in writing of loss, theft, or possible unauthorized use. In any case liability shall not exceed *[insert $50 or any lesser amount under other applicable law or under any agreement with the cardholder]*."

(e) **Notice to card issuer.** For the purposes of this section, a cardholder notifies a card issuer by taking such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information with respect to loss, theft, or possible unauthorized use of any credit card, whether or not any particular officer, employee, or agent of the card issuer does, in fact, receive such notice or information. Irrespective of the form of notice provided under paragraph (b)(4) of this section, at the option of the cardholder, notice may be given to the card issuer or his designee in person or by telephone or by letter, telegram, radiogram, cablegram, or other written communication which sets forth the pertinent information. Notice by mail, telegram, radiogram, cablegram, or other written communication shall be considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(f) **Action to enforce liability.** In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in paragraphs (b) and (c) of this section, have been met.

(g) **Effect on other applicable law or agreement.** Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

(h) **Business use of credit cards.** If 10 or more credit cards are issued by one card issuer for use by the employees of a single business or other organization, nothing in this section prohibits the card issuer from agreeing by contract with such

business or other organization as to liability for unauthorized use of any such credit cards without regard to the provisions of this section, but in no case may any business or other organization or card issuer impose liability on any employee of such business or other organization with respect to unauthorized use of such credit card except in accordance with and subject to the other liability limitations of this section.

(i) **Right of cardholder to assert claims or defenses against card issuer.**[13, 152, 160, 167] (1) When a person who provides property or services fails to satisfactorily resolve a dispute as to property or sevices purchased by use of a credit card in connection with a consumer credit transaction, the cardholder may assert all claims (other than tort claims) and defenses arising out of the transaciton and relating to such failure against the card issuer, and the cardholder may withhold payment up to the amount of credit outstanding with respect to the property or services which gave rise to the dispute and any finance charges, late payment charges, or other charges imposed on that amount if:

(i) The cardholder has made a good faith attempt to obtain satisfactory resolution of the disagreement or problem relating to the transaction from the person honoring the credit card;[159]

(ii) The amount of credit extended by the card issuer to the cardholder to obtain the property or services which resulted in the assertion of the claim(s) or defense(s) by the cardholder exceeds $50; and

(iii) The initial transaction which gave rise to the assertion of the claim(s) or defense(s) by the cardholder occurred in the same State as the cardholder's current designated address or, if not within the State of the cardholder's address, within 100 miles from such address, except that the limitations stated in paragraphs (ii) and (iii) of this section shall not apply when the person honoring the credit card:[157, 159]

(A) Is the same person as the card issued, or

(B) Is controlled, directly or indirectly, by the card issuer, or

(C) Is under the direct or indirect control of a third person who also directly or indirectly controls the card issuer, or

(D) Controls, directly or indirectly, the card issuer, or

(E) Is a franchised dealer in the card issuer's products or services, or

(F) Has obtained the order for the transaction, relative to which the claim(s) or defense(s) is asserted, through a mail solicitation made by or participated in by the card issuer, in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

Simply honoring or indicating that a person honors a particular credit card is not any of the relationships described in paragraphs (A) through (F) for the purpose of removing the dollar and distance limitations.

(2) The amount of the claim(s) or defense(s) assertable by the cardholder under this section may not exceed the amount of credit outstanding with respect to the transaction which gave rise to the assertion of the claim(s) or defense(s) at the time the cardholder first notifies the card issuer or the person honoring the credit card for such transaction of the existence of such claim(s) or defense(s). For purposes of determining the amount of credit outstanding with respect to such transactions as provided in the preceding sentence, payments and other credits to the cardholder's account will be deemed to have been applied in the order indicated to the payment of:

(i) Late charges in the order of entry to the account,

(ii) Finance charges in the order of entry to the account,

(iii) Any other debits in the order in which each debit entry was made to the account, and

(iv) When more than one item is included in a single extension of credit, credits are to be distributed pro rate according to prices and applicable taxes.

(3) This section does not apply to cash advances obtained with a credit card when the advance is unrelated to any specific credit sale item.

(4) If the cardholder refuses to pay the amount of credit outstanding with respect to the property or services which gave rise to the claim(s) or defense(s) under this section, the creditor may not report to any person that particular amount as delinquent until the dispute is settled or judgment is rendered.[15a] [157, 159]

(j) **Prohibition of offsets by card issuer.** (1) A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless a court order[16] is obtained.[13, 156, 158, 160]

(2) The prohibition in paragraph (j)(1) of this section does not apply to credit card plans in which the cardholder authorizes the card issuer as a method of payment to periodically deduct all or a portion of the cardholder's credit card debt from his deposit account with the card issuer (subject to the limitations in § 226.14(c)), provided that:

(i) Such automatic debit was previously authorized in writing by the cardholder, or

(ii) With respect to such automatic debit accounts in existence on October 28, 1975, the card issuer has given notice of the provisions of paragraph (j) of this section to such accounts prior to renewal of the authorization (in no case later than October 28, 1976).

(k) **Prompt notification of returns.**[13, 160] (1) When any creditor other than the card issuer accepts the return of property or forgives a debt for services which is to be reflected as a credit to the customer's open end credit card account, he shall promptly (in no case later than 7 business days from the date the return is accepted) transmit a statement with respect thereto to the card issuer through the normal channels established by the card issuer for the transmittal of such statements.[167, 171]

[15a] Nothing in this paragraph prohibits a creditor from reporting the disputed amount or account as being in dispute.

[16] This paragraph does not alter or affect the right of a card issuer acting under State law to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy s constitutionally available to creditors generally.

(2) Upon receipt of a credit statement, the card issuer shall credit the customer's account promptly (in no case later than 3 business days from receipt of the refund statement) with the amount of the refund.

(3) If it is a creditor's (other than a card issuer) policy to give cash refunds to cash customers, he must also give credit or cash refunds to credit card customers, unless he clearly and conspicuously discloses that he does not give credit or cash refunds for returns at the time the transaction is consummated. Nothing in this section shall be construed to require that a creditor give refunds for returns nor shall it be construed to prohibit refunds in kind.[167]

(l) **Prohibited acts of card issuers.**[13, 160] (1) No card issuer may, be contract or otherwise:

(i) Prohibit any person from offering any cash discounts to all customers of such person, including cardholder customers, to induce such customers to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services, or

(ii) Require any person who honors the card issuer's credit card to open or maintain a deposit account or procure any other service not essential to the operation of the credit card plan from the card issuer, its subsidiary, agent, or any other person, as a condition of participation in a credit card plan.[154, 155, 167]

(2) Within 30 days of the effective date of these regulations, any card issuer with existing contracts which include either one or both of the restrictive clauses prohibited in paragraph (1) shall inform all parties to the contract that such provisions are inapplicable and no longer enforceable.[155]

SECTION 226.14—BILLING ERRORS—RESOLUTION PROCEDURE

(a) **Correction of billing errors.** After the creditor receives proper written notification of a billing error, unless the customer has subsequently agreed that the periodic statement is correct, the creditor shall:[13, 164, 168]

(1) Not later than 30 days after receipt of such notification, mail or deliver written acknowledgment thereof to the customer's current designated address, unless the appropriate actions in paragraph (2) of this section are taken within such 30 day period;[162] and

(2) Resolve the dispute not later than 2 complete billing cycles (in no event more than 90 days) from the date of receipt of the notice of billing error and prior to any action by the creditor to collect[17] any portion of the amount(s) indicated by the customer as being a billing error or any finance charges, late payment charges, or other charges computed on such disputed amount(s) by:[162]

(i) Correcting the customer's account in the full amount indicated by the customer to have been erroneously billed in accordance with paragraph (b)(2) of this section and mailing or delivering to the customer a written notification of corrections;[18 71, 168] or

(ii) Correcting the customer's account by a differing amount from that indicated by the customer as being erroneously billed in accordance with paragraph (b)(2) of this section and mailing or delivering to the customer an explanation of the change(s), accompanied by copies of documentary evidence of the customer's indebtedness if such evidence is requested by the customer;[168] or

(iii) Mailing or delivering a written explanation or clarification to the customer, after having conducted a reasonable investigation, setting forth, to the extent applicable, the reasons why the creditor believes the amount(s) was correctly shown on the periodic statement and, if the customer so requests, furnishing copies of documentary evidence of the customer's indebtedness with respect to the alleged billing error(s). In any case where the customer alleges that the periodic statement reflects property or services not delivered to the customer or his designee in accordance with any agreement made in connection with the transaction giving rise to the disputed amount, a creditor may not construe such amount to be correctly shown on the periodic statement unless the creditor determines, upon reasonable investigation, that such property or services were actually delivered, mailed, or otherwise sent to the customer or his designee and provides the customer with a written statement explaining such determination. In any case where the customer alleges that an amount of a transaction reflected on the periodic statement is incorrect because the person honoring the credit card has made an incorrect report to the card issuer of the amount which should have been charged, the card issuer may not construe such amount to be correctly reflected on the periodic statement unless the creditor determines, upon reasonable investigation, that the correct amount is shown on the periodic statement and provides the customer with a written statement explaining such determination.[168]

After complying with the provisions of this section with respect to an alleged billing error, a creditor has no further responsibility under this section if the customer continues to make substantially the same allegation with respect to such error.

(b) **Minimum periodic payments and finance charges on disputed amounts.** (1) When a minimum periodic payment is permitted, the customer may withhold that portion of the minimum periodic payment which the customer believes is related to the amount in dispute. When the disputed amount is only a part of the total amount of an item, the customer remains obligated to pay the amount not in dispute, and any minimum periodic payment and finance charges, late payment charges, or other charges may be collected on the undisputed

[17] If, despite the establishment by the creditor of procedures reasonably adapted to assure compliance with this paragraph, the creditor or his agent, within 2 business days after receiving proper written notification of a billing error pursuant to this section, inadvertently takes action to collect in contravention of this paragraph, such inadvertent action to collect will not be considered in violation of this paragraph.

[18] A notice on a subsequent billing statement clearly identifying any amount credited to the customer's account in response to a proper written notification of a billing error is one type of a proper transmittal of a written notification of corrections.

amount. If, at the completion of the error resolution procedure, it is determined that the customer owes some or all of the disputed amount, the creditor may require payment of any minimum periodic payment amounts which the customer did not pay because of the dispute. The creditor may not, however, accelerate the customer's entire debt solely because the customer has exercised rights provided by the Act or this Part.[163]

(2) With respect to an erroneous billing, the creditor must credit the customer's account in any amount the customer does not owe, plus any finance charges, late payment charges, or other charges imposed as a result of the erroneous billing. An erroneous billing by a creditor includes, but is not limited to, a misidentification, insufficient identification, or incorrect date of a transaction; a mailing of the periodic statement to other than the current designated address; improper crediting of payments or other credits; computation errors; or a billing for property or services not accepted or delivered in accordance with any agreement; as well as mistakes in dollar amounts.[69, 163, 165, 167]

(3) After or upon completion of the dispute resolution procedure prescribed by § 226.14(a):[165, 167, 168]

(i) If the initial periodic statement is determined to be without error with regard to the disputed item, the creditor shall promptly mail or deliver to the customer written notification of the amount owed with regard to the disputed item, unless such notification is not required by paragraph (a) of this section, or

(ii) If the initial periodic statement is determined to be in error with regard to the disputed item and the creditor normally allows a period for the customer to pay such an item without incurring additional finance charges, late payment charges, or other charges, the creditor shall mail or deliver to the customer written notification of the total amount which the customer owes with regard to the disputed item and shall allow the customer the same number of days thereafter as he customarily or by credit agreement allows, whichever is longer (in no case less than 10 days), for the customer to pay undisputed amounts in accordance with § 226.7(b)(2), or

(iii) If the initial periodic statement is determined to be in error with regard to the disputed item and the creditor normally does not allow a period for the customer to pay such an item without incurring additional finance charges, late payment charges, or other charges, the creditor shall promptly mail or deliver to the customer a notice of the total amount which the customer owes with regard to the disputed item.

(4) Nothing in this section shall be construed to prohibit the mailing or delivery of periodic statements, which include disputed amounts, to the customer, provided that the creditor indicates on the fact of the periodic statement that payment of the amount in dispute is not required pending the creditor's compliance with the provisions of this section.[69, 168]

(5) Nothing in this section shall prohibit any action by a creditor to collect any amount which has not been indicated by the customer to contain a billing error.

(c) **Automatic debit of disputed amounts.**[13, 160] (1) In the case of credit card plans where the cardholder has agreed to permit the card issuer to periodically pay the cardholder's indebtedness by deducting the appropriate amount from the cardholder's deposit account held by the card issuer, if the card issuer receives a proper written notification of a billing error within 16 days from the date of mailing or delivery of the periodic statement on which the suspected billing error first appears, the card issuer shall:

(i) Prevent the automatic debiting of any disputed amounts if receipt of such notification precedes the automatic debiting of the cardholder's account, or

(ii) Promptly (in no case more than 2 business days after receipt of the notice) restore to the cardholder's deposit account any portion of the disputed amount which was previously deducted, if receipt of such notification follows the automatic debiting of the cardholder's account for any disputed amounts.

(2) Nothing in this paragraph shall limit the cardholder's right to dispute an amount he believes to be in error within 60 days of the mailing or delivery of the erroneous periodic statement, as otherwise provided in this section.

(d) **Closing of accounts.** A creditor may not, prior to complying with the requirements of paragraphs (a) and (b) of this section, restrict or close an account with respect to which the customer has indicated a belief that such account contains a billing error solely because of the customer's refusal or failure to pay the amount indicated to be in error. This paragraph does not prohibit the creditor from applying any such amount to the customer's credit limitation.[13]

(e) **Credit reports on amounts in dispute.** (1) After receiving a proper written notification of a billing error pursuant to this section, neither the creditor nor his agent may directly or indirectly threaten to report adversely to any person on the customer's credit standing or credit rating because of the customer's failure to pay the amount specified in such notification as being a billing error, or any finance charges, late payment charges, or other charges imposed thereon, nor shall such amount be reported as delinquent[19] to any third person unless such amount remains unpaid after the creditor has complied with all the requirements of this section and has allowed that customer the same number of days thereafter to pay as he customarily or by credit agreement allows, whichever is longer (in no case less than 10 days), for the customer to pay undisputed amounts so as to avoid the imposition of additional finance charges, late payment charges, or other charges. If, despite establishment by the creditor of procedures reasonably adapted to assure compliance with this paragraph, the creditor or his agent, within 2 business days after receiving proper written notification of a billing error pursuant to this section, inadvertently takes action in contravention of this paragraph, such inadvertent action will not be considered in violation of this paragraph.[13, 166, 169]

(2) If, within the time limit allowed for payment in paragraph (e)(1) of this section, the creditor receives a further written notification from the customer that any portion of a billing error resolved under paragraph (a) of this section is still in dispute, the creditor may not report to any third party that

[19]Nothing in this paragraph prohibits a creditor from reporting the disputed amount or account as being in dispute.

such disputed amount is delinquent unless the creditor also reports that the amount or account is in dispute and, at the same time, notifies the customer in writing of the name and address of each party to whom the creditor is reporting information concerning the disputed amount. If, pursuant to this paragraph, a creditor has reported a disputed amount as being delinquent to any third person, the creditor shall report promptly in writing[20] to any such person subsequent resolution of the reported delinquency.

(3) If a creditor has reported an amount as being delinquent to any third person who is in the business of collecting and disseminating information relating to the creditworthiness of customers, and such amount is subsequently disputed by the customer in accordance with the requirements of § 226.2(cc), the creditor shall, within one billing cycle after receipt of proper written notification of the billing error, mail or deliver a written notice[21] to each such third person to whom the delinquency was reported that the amount is in dispute.[171]

(f) **Forfeiture penalty.** (1) Any creditor who fails to comply with the requirements of this section forfeits any right to collect from the customer the amount indicated by the customer to be a billing error, whether or not such amount is in fact in error, and any finance charges, late payment charges, or other charges imposed thereon, provided that the amount so forfeited under this section shall not exceed $50 for each item or transaction on a periodic statement indicated by the customer to be a billing error. In no case shall a creditor forfeit any amount for an error in a total figure or subtotal figure reflected on a statement which is caused solely by an error in another item which is the subject of a dispute, nor shall a creditor suffer any forfeit more than once for any item or transaction which may appear on a periodic statement.[13]

(2) Nothing in this subsection shall be construed to limit a customer's right to recover under section 130 of the Act.

(g) **Exceptions to general rule.** This section does not apply to credit other than open end, whether or not a periodic statement is mailed or delivered, unless it is consumer credit extended on an account by use of a credit card.

226.15—CONSUMER LEASING

(a) **General requirements.** Any lessor shall, in accordance with § 226.6 and to the extent applicable, make the disclosures required by paragraph (b) of this section with respect to any consumer lease. Such disclosures shall be made prior to the consummation of the lease on a dated written statement which identifies the lessor and the lessee, and a copy of such statement shall be given to the lessee at that time. All of the disclosures shall be made together on either

(1) The contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or

(2) A separate statement which identifies the lease transaction.

In any lease of multiple items, the description required by § 226.15(b)(1) may be provided on a separate statement or statements which are incorporated by reference in the disclosure statement required by § 226.15(a).

(b) **Specific disclosure requirements.** In any lease subject to this section the following items, as applicable, shall be disclosed:

(1) A brief description of the leased property, sufficient to identify the property to the lessee and lessor.

(2) The total amount of any payment, such as a refundable security deposit paid by cash, check or similar means, advance payment, capitalized cost reduction or any trade-in allowance, appropriately identified, to be paid by the lessee at consummation of the lease.

(3) The number, amount and due dates or periods of payments scheduled under the lease and the total amount of such periodic payments.

(4) The total amount paid or payable by the lessee during the lease term for official fees, registration, certificate of title, license fees or taxes.

(5) The total amount of all other charges, individually itemized, payable by the lessee to the lessor, which are not included in the periodic payments. This total includes the amount of any liabilities the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values, required to be disclosed under § 226.15(b)(15)(i).

(6) A brief identification of insurance in connection with the lease including (i) if provided or paid for by the lessor, the types and amounts of coverages and cost to the lessee, or (ii) if not provided or paid for by the lessor, the types and amounts of coverages required of the lessee.

(7) A statement identifying any express warranties or guarantees available to the lessee made by the lessor or manufacturer with respect to the leased property.

(8) An identification of the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility, and a statement of reasonable standards for wear and use, if the lessor sets such standards.

(9) A description of any security interest, other than a security deposit disclosed under § 226.15(b)(2), held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates.

(10) The amount or method of determining the amount of any penalty or other charge for delinquency, default or late payments.

(11) A statement of whether or not the lessee has the option to purchase the leased property and, if at the end of the lease term, at what price, and, if prior to the end of the lease term, at what time and the price or method of determining the price.

(12) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

[20] "In writing" shall include transmission by computer communication.

[21] "Written notice" shall include computer communication.

(13) A statement that the lessee shall be liable for the difference between the estimated value of the property and its realized value at early termination or the end of the lease term, if such liability exists.

(14) Where the lessee's liability at early termination or at the end of the lease term is based on the estimated value of the leased property, a statement that the lessee may obtain at the end of the lease term or at early termination, at the lessee's expense, a professional appraisal of the value which could be realized at sale of the leased property by an independent third party agreed to by the lessee and the lessor, which appraisal shall be final and binding on the parties.

(15) Where the lessee's liability at the end of the lease term is based upon the estimated value of the leased property:

(i) The value of the property at consummation of the lease, the itemized total lease obligation at the end of the lease term, and the difference between them.

(ii) That there is a rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment allocable to a monthly period, and that the lessor cannot collect the amount of such excess liability unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees, and that this provision regarding the presumption and attorney's fees does not apply to the extent the excess of estimated value over realized value is due to unreasonable wear or use, or excessive use.

(iii) A statement that the requirements of § 226.15 (b)(15)(ii) do not preclude the right of a willing lessee to make any mutually agreeable final adjustment regarding such excess liability.

(c) **Renegotiations or extensions.** If any existing lease is renegotiated or extended, such renegotiation or extension shall be considered a new lease subject to the disclosure requirements of this Part, except that the requirements of this paragraph shall not apply to (1) a lease of multiple items where a new item(s) is provided or a previously leased item(s) is returned, and the average payment allocable to a monthly period is not changed by more than 25 per cent, or (2) a lease which is extended for not more than six months on a month-to-month basis or otherwise.

Truth in Lending Act

§ 1. Short title of entire Act

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

TITLE I—CONSUMER CREDIT COST DISCLOSURE

[15 U.S.C. §§ 1601 et seq.]

CHAPTER 1—GENERAL PROVISIONS

§ 101. Short title

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

§ 102. Findings and declaration of purpose

(a) 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, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

(b) The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this title to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit the balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements.

§ 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 which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise. For the purposes of the requirements imposed under chapter 4 and sections 127(a)(6), 127(a)(7), 127(a)(8), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(9), and 127(b)(11) of chapter 2 of this title, the term "creditor" shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Board shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open end credit plans.

(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.

(j) The term "adequate notice," as used in section 133,

means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

(k) The term "credit card" means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(l) The term "accepted credit card" means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

(m) The term "cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(n) The term "card issuer" means any person who issues a credit card, or the agent of such person with respect to such card.

(o) The term "unauthorized use," as used in section 133, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(p) The term 'discount' as used in section 167 means a reduction made from the regular price. The term 'discount' as used in section 167 shall not mean a surcharge.

(q) The term 'surcharge' as used in section 103 and section 167 means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means.

(r) 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.

(s) 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.

(t) 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.

(5) Credit transactions primarily for agricultural purposes in which the total amount to be financed exceeds $25,000.

§ 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 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 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 Reserve 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 Owner's 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 Federal Avaiation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(5) 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.

(6) the Farm Credit Act of 1971, by the Farm Credit

Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(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. (Repealed)

§ 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, permissable 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, 130, and 166, 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.

§ 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.

§ 115. Liability of assignees

Except as otherwise specifically provided in this title, any civil action for a violation of this title which may be brought against the original creditor in any credit transaction may be maintained against any subsequent assignee of the original creditor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is involuntary.

CHAPTER 2—CREDIT TRANSACTIONS

Sec.

127. Open end consumer credit plans.
128. Sales not under open end credit plans.
129. Consumer loans not under open end credit plans.
130. Civil liability.
131. Written acknowledgment as proof of receipt.
132. Issuance of credit cards.
133. Liability of holder of credit card.
134. Fraudulent use of credit card.
135. Business credit cards.

§ 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 the information required under this chapter or chapter 4.

(b) If there is more than one obligor, a creditor need not furnish a statement of information required under this chapter or chapter 4 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 or chapter 4 be made in the order set forth in this chapter or chapter 4, and may permit the use of terminology different from that employed in this chapter or chapter 4 if it conveys substantially the same meaning.

(b) Any creditor may supply additional information or explanations with any disclosures required under this chapter or chapter 4.

§ 123. Exemption for State-regulated transations

The Board shall by regulation exempt from the requirements of this chapter any class of credit transactions with 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, including any such interest arising by operation of law, is or will be 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, including any such interest arising by operation of law, 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 transactrion. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligatpons under this sevtion, 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 acknowledgement 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 or to a consumer credit transaction in which an agency of a State is the creditor.

(f) An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs earlier, notwithstanding the fact that the disclosures required under this section or any other material disclosures required under this chapter have not been delivered to the obligor.

§ 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, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of such time period.

(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.

(8) A statement, in a form prescribed by regulations of the Board of the protection provided by sections 161 and 170 to an obligor and the creditor's responsibilities under sections 162 and 170. With respect to each of two billing cycles per year, at semi-annual intervals, the creditor shall transmit such statement to each obligor to whom the creditor is required to transmit a statement pursuant to section 127(b) for such billing cycle.

(b) The creditor of any accout 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 oustanding 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 a brief identification on or accompanying the statement of each extension of credit in a form prescribed by regulations of the Board sufficient to enable the obligor to identify the transaction, or relate it to copies of sales vouchers or similar instruments previously furnished.

(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 a 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 rate 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, the 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, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period.

(11) The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor.

(c) In the case of any existing account under an open end consumer credit plan having an outstanding balance of more than $1 at or after the close of the creditor's first full billing cycle under the plan after the effective date of subsection (a) or any amendments thereto, the items described in subsection (a), to the extent applicable and not previously disclosed, shall be disclosed in a notice mailed or delivered to the obligor not

later than the time of mailing the next statement required by subsection (b).

§ 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 referred 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 ahpurchase 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 gates, 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 papd 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 to comply with any requirement imposed under this chapter or chapter 4 or 5 of this title with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2) (A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, or (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease, except that the liability shall not be less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the creditor; and

(3) 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.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(b) A creditor has no liability under this section for any failure to comply with any requirement imposed under this chapter or chapter 5, 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 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 title 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.

(f) No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) The multiple failure to disclose to any person any information required under this chapter or chapter 4 or 5 of this title to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries.

(h) A person may not take any action to offset any amount for which a creditor is potentially liable to such person under subsection (a)(2) against any amount owing to such creditor by such person, unless the amount of the creditor's liability to such person has been determined by judgment of a court of competent jurisdiction in an action to which such person was a party.

§ 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.

§ 132. Issuance of credit cards

(a) A cardholder shall be liable for the unauthorized use of a credit card only if the card is an accepted credit card, the liability is not in excess of $50, the card issuer gives adequate notice to the cardholder of the potential liability, the card issuer has provided the cardholder with a self-addressed, prestamped notification to be mailed by the cardholder in the event of the loss or theft of the credit card, and the unauthorized use occurs before the cardholder has notified the card

issuer that an authorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise. Notwithstanding the foregoing, no cardholder shall be liable for the unauthorized use of any credit card which was issued on or after the effective date of this section, and, after the expiration of twelve months following such effective date, no cardholder shall be liable for the unauthorized use of any credit card regardless of the date of its issuance, unless (1) the conditions of liability specified in the preceding sentence are met, and (2) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it. For the purposes of this section, a cardholder notifies a card issuer by taking such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

(b) In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a), have been met.

(c) Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

(d) Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

§ 134. Fraudulent use of credit card

(a) Whoever knowingly in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(b) Whoever, with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtrained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(c) Whoever, with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(d) Whoever knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (1) within any one-year period has a value aggregating $1,000 or more, (2) has moved in or is part of, or which constitutes interstate or foreign commerce, and (3) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card; or

(e) Whoever knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (1) within any one-year period have a value aggregating $500 or more, and (2) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit cards; or

(f) Whoever in a transaction affecting interstate or foreign commerce furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

§ 135. Business credit cards

The exemption provided by section 104(1) does not apply to the provisions of sections 132, 133, and 134, except that a card issuer and a business or other organization which provides credit cards issued by the same card issuer to ten or more of its employees may by contract agree as to liability of the business or other organization with respect to unauthorized use of such credit cards without regard to the proviions of section 133, but in no case may such business or other organization or card issuer impose liability upon any employee with respect to unauthorized use of such a credit card except in accordance with and subject to the limitations of section 133.

CHAPTER 3—CREDIT ADVERTISING

§ 141. Catalogs and multiple-page advertisements

For the purposes of this chapter, a catalog or other multiple-page advertisement shall be considered 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 advertising 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.

§ 146. More-than-four-installment rule

Any advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit repayable in more than four installments shall, unless a finance charge is imposed, clearly and conspicuously state, in accordance with the regulations of the Board:

"THE COST OF CREDIT IS INCLUDED IN THE PRICE QUOTED FOR THE GOODS AND SERVICES."

CHAPTER 4—CREDIT BILLING

Sec.

§ 161. Correction of billing errors

(a) If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 127(b)(11) a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 127(a)(8) from the obligor in which the obligor—

(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and

(3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

(A) not later than thirty days after the receipt of the notice, send a written acknowledgment thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) send a written explanation of clarification to the obligor, after having conducted an investigation, setting forth

to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

(b) For the purpose of this section, a "billing error" consists of any of the following:

(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.

(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.

(4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.

(5) A computation error or similar error of an accounting nature of the creditor on a statement.

(6) Any other error described in regulations of the Board.

(c) For the purposes of this section, "action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)" does not include the sending of statements of account to the obligor following written notice from the obligor as specified under subsection (a), if—

(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a), and

(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section. Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

(d) Pursuant to regulations of the Board, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error.

(e) Any creditor who fails to comply with the requirements of this section or section 162 forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $50.

§ 162. Regulation of credit reports

(a) After receiving a notice from an obligor as provided in section 161(a), a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing bvecause of the obligor's failure to pay the amount indicated by the obligor under section 161(a)(2), and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 161 and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

(b) If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 161(a)(2), unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

(c) A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) to the parties to whom such delinquencies were initially reported.

§ 163. Length of billing period

(a) If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement which includes the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

(b) Subsection (a) does not apply in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of such periodic statement within the time period specified in such subsection because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the Board.

§ 164. Prompt crediting of payments

Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form in the amount, manner,

location, and time indicated by the creditor to avoid the imposition thereof.

§ 165. Crediting excess payments

Whenever an obligor transmits funds to a creditor in excess of the total balance due on an open end consumer credit account, the creditor shall promptly (1) upon request of the obligor refund the amount of the overpayment, or (2) credit such amount to the obligor's account.

§ 166. Prompt notification of returns

With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

§ 167. Use of cash discounts

(a) (1) With respect to credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

(2) No seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means.

(b) With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 106, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board.

§ 168. Prohibition of tie-in services

Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

§ 169. Prohibition of offsets

(a) A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

(2) such action with respect to any oustanding disputed amount not be taken by the card issuer upon request of the cardholder.

In the case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

(b) This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

§ 170. Rights of credit card customers

(a) Subject to the limitation contained in subsection (b), a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial transaction exceeds $50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

(b) The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

§ 171. Relation to State laws

(a) This chapter does not anmul, alter, or affect, or exempt any person subject to the pgovisions of this chapter from complying with, the laws of any State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection to the consumer.

(b) 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 or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

(c) Notwithstanding any other provisions of this title, any discount offered under section 167(b) of this title shall not be considered a finance charge or other charge for credit under the usury laws of any State or under the laws of any State relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element or elements of charges permissible under such laws in connection with the extension or use of credit.

CHAPTER 5—CONSUMER LEASES

Sec.
181. Definitions.
182. Consumer lease disclosures.
183. Lessee's liability on expiration or termination of lease.
184. Consumer lease advertising.
185. Civil liability.
186. Relation to State laws.

§ 181. Definitions

For the purposes of this chapter—

(1) The term 'consumer lease' means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 103(g). Such term does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(2) The term 'lessee' means a natural person who leases or is offered a consumer lease.

(3) The term 'lessor' means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

(4) The term 'personal property' means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

(5) The term 'security' and 'security interest' mean any interest in property which sevures payment or performance of an obligation.

§ 182. Consumer lease disclosures

Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

(1) A brief description or identification of the leased property;

(2) The amount of any payment of the lessee required at the inception of the lease;

(3) The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;

(4) The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability;

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;

(6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;

(7) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;

(8) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;

(9) The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;

(10) Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and

(11) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.

The disclosures required under this section may be made in the lease contract to be signed by the lessee. The Board may pro-

vide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the lessor is not in a position to know exact information.

§ 183. Lessee's liability on expiration or termination of lease

(a) Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not reasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

(b) Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

(c) If a lease has a residual value provision at the termination of the lease, the lessee may obtain at his expense, a professional appraisal of the leased property by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties.

§ 184. Consumer lease advertising

(a) No advertisement to aid, promote, or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at inception of the lease unless the advertisement also states clearly and conspicuously and in accordance with regulations issued by the Board each of the following items of information which is applicable:

(1) That the transaction advertised is a lease.

(2) The amount of any payment required at the inception of the lease or that no such payment is required if that is the case.

(3) The number, amounts, due dates or periods of scheduled payments and the total of payments under the lease.

(4) That the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability.

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time.

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

§ 185. Civil liability

(a) Any lessor who fails to comply with any requirement imposed under section 182 or 183 of this chapter with respect to any person is liable to such person as provided in section 130.

(b) Any lessor who fails to comply with any requirement imposed under section 184 of this chapter with respect to any person who suffers actual damage from the violation is liable to such person as provided in section 130. For the purposes of this section, the term 'creditor' as used in sections 115, 130 and 131 shall include a lessor as defined in this chapter.

(c) Notwithstanding section 130(e), any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this chapter shall be brought within one year of the termination of the lease agreement.

§ 186. Relation to State laws

(a) This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to consumer leases, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection and benefit to the consumer.

(b) The Board shall by regulation exempt from the requirements of this chapter any class of lease 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 or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

TITLE V—GENERAL PROVISIONS

Sec.

§ 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 or 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.

Regulation Z
STAFF OPINION LETTERS

NUMBER 1

This is in reply to your letter *** requesting the Board to indicate that a *** staff letter on Regulation Z, Truth in Lending, represents the position of the Board of Governors

A staff opinion represents the informed view of the particular official responding to the inquiry, who is authorized by the Board to express opinions on the particular subject. While it is possible that in some instances it might not represent the position which the Board members themselves would take if they formally considered the issue, the Board considers the present informal and flexible procedures, by which members of its staff provide opinions on regulatory provisions, an essential part of its operations.

It is the Board's view that the public is entitled to rely on a formal staff opinion unless and until it is altered by the Board after formal consideration. Where the issue involves a statement of legal position, it may be assumed that while the question discussed has not been presented to, nor reviewed by the Board, such view is believed by the staff to be legally sound and judicially sustainable, and would be recommended by the staff for Board adoption should the matter be presented to the Board.

Excerpts from FRB Letter of March 1, 1971, No. 444, by Kenneth A. Kenyon, Deputy Secretary.

NUMBER 2

As I understand the layaway plan outlined in your letter the customer signs an agreement nominally obligating him to pay for the article in a certain number of installments. For this privilege the customer is charged a small fee, in your case $.35 regardless of the amount of the purchase.

Layaway plans are subject to the provisions of Regulation Z unless they meet the tests of interpretation § 226.201. A layaway plan is subject to the Regulation unless there is no contractual obligation to make payments and the customer may revoke and receive back his payments toward the cash price. Consequently your present plan which does involve a contractual obligation places the plan under Regulation Z. While you may not, in fact, choose to enforce that agreement, I think you will agree that in determining whether any plan, layaway or not, falls under the Regulation we must look to the agreement itself and not to the subjective intent of the creditor which is presumably unknown to the customer.

It is our view that when the customer obligates himself to pay for goods and the store obligates itself to sell goods upon payment and not, if the contract is unbreached, to sell them to another, that there is a contract of sale. Who holds title has, under the laws of most States, become a minor consideration. If the obligation of the debtor can be liquidated by installment payments for which he is charged a fee, then we feel there is consumer credit regardless of the number of payments. The fact the creditor chooses to secure his position by pledge until the debt is gone merely means he retains a security interest through that device rather than through other means, such as filed financing statement, which might be available to him.

Where a service fee is applied to any transaction that involves an obligation for deferred payment for goods, such a service fee is, according to Regulation Z, a "finance charge" of one variety or another—to the customer it is a cost of delaying payment. Therefore, while you are quite correct that the less than $5.00 fee relieves you from the APR disclosure, the overall situation is a closed end credit transaction subject to *all* other applicable requirements of the Regulation, including the required terminology.

There is an objection, it seems to me, to the type of machine posting you are contemplating on the grounds that this manner of disclosure is not clear and conspicuous as required by the Regulations. Furthermore as the Regulation presently stands you would be obligated to show the items in Exhibit D, plus the "deferred payment price" (the total of "cash price" and "finance charge") as well as the number, amount and due dates or periods of payments and the other required disclosures.

It appears to me that the solution to your problem at this stage is merely to remove the pro forma contractual obligation from your layaway plan since, as I understand it, you do not enforce it anyway. Having done this and continuing your present policy of returning payments made on the cash price (nevertheless retaining the $.35 layaway fee) your plan would not fall under the requirements of Regulation Z.

Excerpts from FRB Letter of October 17, 1969, No. 159, by Frederic Solomon, Director.

NUMBER 3

The Federal Trade Commission today condemned as reprehensible the practices by some consumer credit grantors of leading the public to believe that the recently effective Truth in Lending Act requires them to change the conditions under which such credit is extended. The Commission has learned that some creditors are informing their customers that the Act and implementing Regulation Z require:

1. The imposition of finance charges where none were previously imposed;
2. The imposition of a finance charge before deducting payments or credits in connection with open end credit billing statements;
3. An increase in finance charges where more modest ones were previously imposed;
4. The discontinuance of a discount for prompt payment;
5. The discontinuance of certain kinds of no finance charge deferred payment plans, such as 30-60-90 day accounts
6. The personal appearance of the customer in the credit office of the store where he has had a long-standing open-end account.

In fact the Truth in Lending Act requires none of these. It is, rather, a disclosure statute requiring a full explanation of the cost and terms of consumer credit in uniform language. The amount and rate of credit charges and the terms so disclosed are a matter of applicable State law and negotiation between the parties. The Truth in Lending Act does not set annual percentage rates, finance charges or terms of creditor's deferred payment plans.

Creditors under the regulatory authority of the Commission should be careful in their representation concerning the purposes and requirements of the Truth in Lending Act. While it is recognized that there are added costs incident to compliance with the Act, the decision to increase finance or other charges is made by creditors in the light of all the circumstances surrounding their credit operations.

Consumers are urged to take exception to all such representations on the part of creditors, to point out these misstatements to the creditor's management, and to report such statements to the Division of Consumer Credit, Federal Trade Commission, Washington, D.C. 20580.

FTC Consumer Credit Policy Statement Number Two, October 13, 1969.

NUMBER 4

This is in response to your letter of October 17, 1969, regarding the applicability of Regulation Z to various transactions entered into by the Collection Department of ***.

The situations described in paragraph one deal with workout arrangements when a judgment has been entered against an individual. It is our present position that Regulation Z is not applicable to arrangements for the payment of judgments. Accordingly, no Regulation Z disclosures need be made in connection with either of the arrangements which you outlined.

In the situation described in paragraph two, a claim based on an open-book account which has not been reduced to a judgment is assigned for collection, and a repayment schedule is set up under which the debtor agrees to pay interest at 7%. This arrangement clearly constitutes an extension of "consumer credit" under the definition in § 226.2(k). Disclosure of the annual percentage rate should present no problem since, apparently, the note provides for repayment of the account plus interest pursuant to a specified schedule.

Excerpts from FRB Letter of February 11, 1970, by Milton W. Schober, Assistant Director.

NUMBER 5

This is in response to your letter of May 1, 1970, regarding the obligation of a creditor under Regulation Z upon a reaffirmation of a debt by a debtor after filing of bankruptcy.

As we understand the situation, a debtor who has been discharged from an obligation through bankruptcy may subsequently reaffirm that obligation. Assuming that the appropriate disclosures were made prior to consummation of the original transaction, your question is whether new disclosures need be made upon reaffirmation. In our opinion, since the debtor who has been discharged from the obligation in the bankruptcy proceedings, this reaffirmation creates a new debt and should be treated as a new transaction requiring new disclosures.

Excerpts from FBR Letter of May 22, 1970, No. 332, by Milton W. Schober, Assistant Director.

NUMBER 6

This is in response to your letter of July 2, 1970, in which you question whether our opinion in public information letters number 328 and number 335 with respect to "workout" or "pre-judgment pay-out" agreements apply to your informal arrangements by telephone to handle collection of workout open-end credit plan accounts.

The opinions expressed in the public information letters referred to above with respect to "workout" or "pre-judgment pay-out" agreements relate to written agreements in which new credit terms are set forth. Where such agreements are entered into informally, *e.g.*, by telephone, no new disclosures need be made.

Excerpts from FRB Letter of July 20, 1970, No. 376, by Frederic Solomon, Director.

NUMBER 7

This is in further reference to your letter of July 9, 1970, concerning the duty to make new disclosures under Regulation Z upon reaffirmation of a debt discharged in bankruptcy. Your letter was prompted by our prior letters 332 and 335 (respectively numbered ¶ 30,387 and ¶ 30,390 in CCH's CONSUMER CREDIT GUIDE). This is designed to clarify those letters.

It is our view that § 226.8(j) which requires new disclosures whenever "any existing extension of credit is refinanced" would apply to any reaffirmation *except* those which involve no change in the credit terms. For example, if the customer resumed his payments following discharge under the original payment schedule and any payments missed during the bankruptcy proceedings were merely brought up to date or placed at the end of the originally scheduled maturity with no additional finance charge, or simply waived by the creditor, no new disclosures would be necessary. However, if any additional amounts were advanced, additional finance charge imposed, payment amounts reduced, or any other material terms of the original obligation modified, we would view it as a "refinancing" under § 226.8(j) requiring new disclosures.

Excerpts from FRB Letter of October 29, 1970, No. 415, by Tynan Smith, Assistant Director.

NUMBER 8

Recently in your consumer column you answered a question involving a lay-away plan. In this column you indicated that Truth in Lending requires merchants to refund money paid toward the purchase of merchandise held on lay-away if the customer decides not to make the purchase. Since our office was responsible for the promulgation of Regulation Z, which implements the Truth in Lending Act, we are anxious to correct what is a misinterpretation of the application of Truth in Lending to lay-away plans.

At the outset, it is important to understand that Truth in Lending is primarily designed to require the disclosure of credit terms to the customer in a consumer credit transaction. It is not intended to change business practices, whether in connection with lay-away plans or other types of consumer transactions, except where such practices are inconsistent with the law's disclosure provisions.

The provision referred to in your column—§ 226.201—is an official Board interpretation of Regulation Z. From time to time, the Board issues these interpretations giving its opinion as to the way in which Regulation Z applies to certain types of transactions. Section 226.201 states that under some conditions, a lay-away plan may constitute an extension of credit for which disclosures are required. However, if the lay-away plan meets certain criteria specified in this interpretation, *i.e.*, "that the customer has no contractual obligation to make payments and may, at his option, revoke a purchase made under the plan and request and receive prompt refund of any amount paid toward the cash price of the merchandise," no disclosures are necessary. The Truth in Lending Act does not require the merchant to return money paid toward the purchase price of merchandise placed on lay-away if it is his practice not to do so—he must simply make the required disclosures. To the extent that your column implied that a refund was required by the Act, it was not correct.

Since our aims are the same—to accurately inform consumers of their rights under Truth in Lending—we felt certain that you would want to be informed about the error. In view of the fact that the column is widely read and has prompted a good deal of correspondence to the Federal Trade Commission on the point, it would be helpful if in some future column you could inform your readers of the actual requirements of Truth in Lending.

Excerpts from FRB Letter of April 15, 1971, by Griffith L. Garwood, Attorney.

NUMBER 9

(Y)our request that we review the proposed new question and answer regarding Truth in Lending and Lay-Away plans. I believe that a fuller explanation of the relationship of Truth in Lending's Regulation Z to lay-away plans may be helpful to you in preparing your answer. The present draft does not accurately reflect the requirements of Truth in Lending.

The Board's interpretation of § 226.201 of Regulation Z provides as follows with regard to lay-away plans:

> Many vendors offer Lay-Away Plans under which they retain the merchandise for a customer until the cash price is paid in full and the customer has *no contractual obligation to make payments* and he may, at his option, *revoke a purchase* made under the plan and request and *receive prompt refund of any amounts paid toward the cash price* of the merchandise.
>
> A purchase under such a Lay-Away Plan shall not be considered an extension of credit subject to the provisions of Regulation Z. (Italics supplied).

Neither Regulation Z, nor the interpretation, prescribes the methods or procedures under which a merchant must operate his lay-away plan. The interpretations merely describes the characteristics of the type of lay-away plan which is not subject to the disclosure provisions of Regulation Z. The interpretation does not require that lay-away deposits be returned; however, if they are returned the plan meets thre requirements for exemption from the disclosure provisions of the regulation.

In order for a lay-away plan to be subject to Regulation Z, the plan must *both* "be considered an extension of credit" under interpretation§ 226.201 and meet the Regulation's definitions of "consumer credit," as spelled out in § 226.2(k). Under that definition, if a finance charge is or may be imposed on the credit, or if, pursuant to an agreement the credit is payable in more than four installments, then the obligation is subject to Regulation Z (assuming certain other provisions of the definition are met). The interpretation, on the other hand, provides that if the customer has no contractual obligation to make payments and can revoke his purchase and obtain a refund of all of the amounts he paid toward the cash price of the merchandise in a lay-away plan, the transaction would not be "an extension of credit" subject to Regulation Z.

Consequently, reading interpretation § 226.201 and the definition of "consumer credit" in § 226.2(k) together, all lay-away plans in which the customer is able to obtain a refund of the amounts paid toward the cash price of the merchandise are excluded from Regulation Z, even where a separate charge is initially made for the lay-away privilege. In addition, lay-away plans payable under an agreement in *four or fewer installments* in which the customer is not able to obtain a refund of amounts paid toward the cash price of the merchandise, and in which there is no initial lay-away charge, are also *not* subject to Regulation Z, because such plans to not meet the definition of "consumer credit" in § 226.2(k).

Lay-away plans payable under agreement in more than four installments in which the customer is unable to obtain the refund mentioned above, even though they involve no separate charge, *are* subject to Regulation Z. All lay-away plans in which refund of amounts paid toward the cash price is not obtainable and which involve a separate lay-away charge *are* subject to the Regulation.

If a lay-away plan is subject to Regulation Z, the creditor must make the applicable diclosures to the consumer. In that case any separate lay-away charge would be considered a finance charge. In addition, the fact that refunds of amounts paid toward the cash price will not be made to the customer upon default should be disclosed in accordance with § 226.8(b)(4) of Regulation Z as a default charge. The fact that merchandise will be held by the creditor until paid for should be disclosed as a security interest under § 226.8(b)(5).

To emphasize again, there is no provision in the Truth in Lending Act, or Regulation Z, requiring the return of deposits, except in certain special situations involving a security interest in real property used, or expected to be used, as the consumer's home. The rescission right in that instance normally extends for only three days.

Excerpts from FRB Letter of July 12, 1971, No. 502, by Griffith L. Garwood, Chief of Section, Truth in Lending.

NUMBER 10

This is (on) the identification of creditors on the disclosure statements required by Regulation Z.

Your first question relates to a heating and cooling company that will be asked to make an estimate and then prepare a contract for installing a new furnace, a new air-conditioning system, or both. You indicate that it is not necessarily known prior to the time that the representative of the company calls on a prospective purchaser whether the sale will be for cash or will be on a credit basis. If the customer asks that the sale be on a credit basis, the retail installment contract and the promissory note are executed and the rescission notice is given. The company then attempts to find a local bank or other financial institution willing to purchase the note and contract from the company. At the time the contract is signed, the name of the bank or financial institution that will ultimately purchase the paper is not known and therefore cannot be disclosed.

Your second question relates to a bank purchasing large numbers of retail installment contracts through a brokerage concern. The contracts are made by a mobile home dealer who has no knowledge at the time of the sale of the name of the ultimate purchaser of the paper.

The question seems to turn on whether the furnace and air-conditioning company and the mobile home dealer are the sole creditors in the transaction, and the subsequent sale of their contracts is a business transaction with the ultimate purchasers of the paper, or whether the merchants and the financial institutions are both creditors by virtue of the merchants actually having "arranged for the extension of credit" to be granted by the purchasers as defined in § 226.2(f).

If the merchants are the sole creditors at consummation of the transaction, they alone would need to be identified on the disclosure statement in accordance with § 226.8(a) (¶ 3565). There is no requirement under Truth in Lending that a subsequent purchaser be identified. On the other hand, if the merchant simply arranges credit to be extended by a subsequent purchaser, both the merchant and the subsequent purchaser are creditors in the transaction (§ 226.6(d)).

From the information in your letter, it appears that the company and the dealer are probably sole creditors and not arrangers, since at the time of execution of the installment contracts, it is not known to whom, when, and presumably even if the contracts will be sold. The question you pose may hinge on a detailed study of the facts in each case. The courts are beginning to offer some guidance on the question, for example, in *Stefanski v. Mainway Budget Plan, Inc.*, CCH CONSUMER CREDIT GUIDE ¶ 99,230, and I suggest you take a look at that opinion.

Excerpts from FRB Letter of August 10, 1972, No. 626, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 11

(This is on) whether Regulation Z applies to a transaction which you describe as follows:

> "A contract was entered into between a home improvement contractor and customer providing for repairs to a home and the permanent coating of the exterior of the home. The total price quoted for the job was $6,000.00 payable $1,000.00 as a downpayment and the balance of $5,000.00 evidenced by and payable under a promissory note entitled "Modernization Loan," which note was payable in four equal monthly installments of $1,250.00 each, for a total of $5,000.00, which, with the initial downpayment not reflected on the note, totals the $6,000 total cost. No interest was reflected on the promissory note, except for interest in the event of default in payment at the rate of 5% per annum. The note is secured by a mortgage on the real property, which real property is used as the principal residence of the customer."

It is the staff's view that the transaction described above is not "consumer credit" as defined in § 226.2(k) of Regulation Z. The transaction is not subject to as finance charge (bona fide late payment charges are not finance charges under § 226.4(c)) and it is not payable in more than four installments. In computing the number of installments, any downpayment is not considered to be an installment. Consequently, the transaction would not be subject to either the disclosure or rescission provisions of the Regulation.

Excerpts from FRB Letter of July 6, 1973, No. 695, by Griffith L. Garwood, Adviser.

NUMBER 12

Your note asked for suggestions in responding to the *** June 15, 1973, letter of *** relating to the *** agreement.

The agreement provides that in the case of a "supplementary card" (a card issued to an employee of a company in his own name and in the name of the company) *** will bill only the employer, although both the employer and the employee are jointly and severally liable on all obligations incurred under the account. The question is whether § 226.7(b) of Regulation Z requires *** to send a periodic billing statement to the employee as well as to the employer.

The key question seems to be to whom credit is extended, and whether it is "consumer credit" as opposed to business credit. If credit is extended to the company, then the entire transaction is exempt from Truth in Lending under § 226.3(a). However, if credit is extended to the employee as well as the company, the question arises as to whether the credit is for business or commercial purposes, or whether it is primarily for personal, family, household or agricultural purposes. If the credit is for business or commercial purposes, it would not be subject to Truth in Lending by virtue of the exemption in § 226.3(a). On the other hand, if the purpose of the credit is mixed but *primarily* for personal, family, household or agricultural purposes, the credit would be subject to Truth in Lending's provisions. However, we suspect that few cards, if any, which are issued with a corporation as a cardholder would fall within this category.

If the account does fall within the disclosure provisions of the Regulation, there would appear to be a single "customer" one this account since there is only one "natural person" (see § 226.2(o)) and the provisions of § 226.6(e) relating to multiple customers would not apply. In such cases, although the employee would be the nominal party entitled to disclosures, we believe that these disclosures could be sent to him within the requirements of § 226.7(b) by sending them to the company's address, since that address is apparently the address designated by the parties for delivery of the disclosures.

Excerpts of FRB Letter of November 13, 1973, No. 727, by Griffith L. Garwood, Adviser.

NUMBER 13

In Mr. Kluckman's absence, I have been asked to respond to your letter *** raising a question under Regulation Z. Your question is whether a bank and its affiliates (collectively "Bank") who have entered into a series of agency agreements with other banks (the "Principals") engaged in offering (credit card) services to customers and merchants in the Bank's local area are card issuers as defined by § 226.2(1).

As you outlined the matter, the facts are as follows:

1. Under the several agency agreements, the Bank promotes and services the credit card program by soliciting merchant agreements, furnishing names of individuals for solicitation and issuance of credit cards by the Principals, delivering supplies and furnishing information to merchants, auditing sales drafts, accepting and crediting merchant accounts for sales drafts arising from credit card sales and forwarding the same on to the card issuer for credit to its account, and performing other miscellaneous services.

2. The agency agreement between the Principals and Bank is that the credit cards are issued at the sole discretion of the Principals and at their risk. The Bank displays at its branches credit card applications which, when completed by the applicants, are mailed to the card issuing Principals.

3. The Bank makes cash advances to cardholders with a floor limit of $25 or $50. In making these advances, you state that the Bank acts just like any merchant honoring credit cards.

4. The Banks' compensation as agent is based upon a percentage of the applicable merchant discount on drafts submitted by those merchants solicited by the Bank who sign agreements with the Principal.

5. With the exception of one Bank, in general the Bank's name does not appear on the credit cards; all periodic statements emanate from the Principals, Bank does no billing and its name does not appear on the periodic statements received by the cardholders, and the billing error inquiries go directly to the Principals.

6. In the case of one affiliate, the exception listed in paragraph 5 above, its name does appear on all credit cards issued by one Principal. The periodic statement rendered by the Principal to these cardholders request that inquiries be addressed to the bank at an address which is, in fact, an address of the Principal.

In staff's view, the facts which you have outlined are sufficient to constitute an agency relationship as contemplated by § 226.2(1) of Regulation Z. The result is that the Bank in this case is considered to be the card issuer.

However, in staff's view, this does not mean that both the Bank and the Principal must comply with the error resolution procedure of § 226.14. Under the Regulation, it is permissible for one or the other of the parties to be the person to whom notices of billing errors are to be directed with the attendant responsibility to respond placed on that party. This can be accomplished by giving the address of one or the other of the parties on the periodic statements as the address for the receipt of billing error notices as required by § 226.7(b)(1)(x).

In staff's view, § 226.13(i), regarding the customer's right to assert claims and defenses against the card issuer, § 226.13(j), concerning a prohibition of offsets by card issuers, § 226.13(k), concerning prompt notification of returns, § 226.13(l), regarding prohibited acts of card issuers, and the remainder of § 226.13, which does not deal with the actual mechanics of resolving billing errors, must be complied with by both the Bank and the Principal. This includes, but is not limited to, § 226.14(c) regarding automatic debits of disputed amounts, § 226.14(d) regarding closing of accounts,§ 226.14(e) regarding credit reports on amounts in dispute, and § 226.14(f) regarding the forfeiture penalty.

The discussion outlined above is made in an attempt to fully outline staff's view of the responsibilities of the Bank and the Principals and to point out areas in which staff feels that coordinated action between the Bank and Principal is or may be necessary. There may be other yuch areas where coorbinated activity and planning is desirable, and it is not the staff's intent that this letter should be interpreted as excluding other areas not mentioned above.

Excerpts from FRB Letter of July 21, 1976, No. 1089, by D. Edwin Schmelzer, Acting Chief, Fair Credit Practices Section.

NUMBER 14

The *** take issue with a $25 fee charged for the Truth in Lending disclosures in connection with the recent credit transaction involving the purchase of their home.

Neither the Truth in Lending Act nor Regulation Z, which was issued by the Board to implement the Act, expressly authorize or prohibit the imposition of a fee for making the disclosures required under Truth in Lending. We have taken the position, however, that such fees must be included as part of the finance charge and, as such, must be included in the computation of the annual percentage rate.

Excerpts from FRB Letter of January 24, 1972, by J.L. Robertson.

NUMBER 15

Your letters are in reference to the sale plan of your client which is a specialty mail order house which does all its selling by means of direct mail solicitation. Its customers are offered a seven-day free trail for all merchandise ordered. Full payment for the merchandise is due at the end of the trial period. It has been the company's practice to pay postage and handling costs on orders accompanied by full payment. Where payment is not sent with the order and the merchandise is paid for after delivery, such costs are borne by the purchaser. Your question is whether the postage and handling charges paid by customers who do not send payment with their orders are finance charges under the Truth in Lending Act and Regulation Z.

It is the staff's view that the postage and handling charges paid by those customers who do not pay for the merchandise when ordered are not finance charges under § 226.4(a) of Regulation Z, *provided* they can be characterized as late payment or similar charges excluded from the finance charge catregory by § 226.4(c) of Regulation Z. This might take a slight restructuring of your client's promotional material to indicate that payment is due with the order (still subject to the money back free trial) and that payment of postage and handling fees is imposed as a one time late payment charge.

Excerpts from FRB Letter of June 8, 1972, No. 608, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 16

(A) banking client of yours has instituted a plan consisting of a package of banking services, such as free checkng accounts, free safe deposit boxes, and reduced rates on certain types of installment loans. Participants in this plan also receive a credit card which is subject to the same terms and conditions as all other credit cards issued by the bank. Participants in the plan pay a $2 monthly fee and you question whether such a fee is a finance charge under § 226.4(a) of Regulation Z.

It is staff's opinion that the fee in the plan described would not be a finance charge under the rationale presented in interpretation § 226.407. The fee is required as a condition of membership in the plan, which includes other services in addition to credit. Furthermore, the fee is the same whether or not credit services are used and it is not incident to or a condition of any specific extension of credit.

Excerpts from FRB Letter of August 24, 1973, No. 715, by D. Edwin Schmelzer, Attorney.

NUMBER 17

This is in response to your letter of February 11, questioning whether charges for computer services on consumer loans must be included in the finance charge and reflected in the annual percentage rate under the provisions of Regulation Z. You indicate that a bank client which you represent utilizes the computer services of another bank for its consumer loan accounting. The client bank pays the processing bank an initial fee of 75^{c} for each loan plus a monthly fee of 15^{c} as long as the loan remains outstanding and unpaid. The client bank passes these charges on to the customer.

It is staff's view that such charges clearly fall within the definition of finance charge under § 226.4(a) of Regulation Z and that they must be disclosed to the customer as such under § 226.8(d)(3). As finance charges, these computer charges must be added to all of the other finance charges in computing the annual percentage rate to be disclosed to the consumer.

Excerpts from FRB Letter of February 15, 1974, No. 765, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 18

This is in response to your letter of January 9, 1974, questioning whether a premium for creditor non-filing insurance which is equal to the official fees and charges payable for filing *and* releasing or satisfying a security interest may be itemized and excluded from the finance charge under the terms of § 226.4(b)(1) and (2) of Regulation Z.

We interpret the language in § 226.4(b)(2) to mean that a premium may be itemized and excluded from the finance charge, if it "does not exceed the *fees* and *charges* described in subparagraph (1)" *i.e.,* to permit the premium charged to be equal to the aggregate amount of the fees assessed for perfecting *and* releasing or satisfying a security interest. Thus, the full amount of the premium may be itemized and excluded.

We trust this is responsive to your inquiry and that our delay in responding has not caused undue inconvenience.

Excerpts from FRB Letter of June 20, 1974, No. 812, by D. Edwin Schmelzer, Attorney.

NUMBER 19

This letter responds to your request of March 3, 1975, for advice with respect to the applicability of § 226.4(c) of Regulation Z and Interpretation § 226.401 to the credit practices of a retail merchant who is a client of your firm.

You state that the retailer may impose a one per cent per month fee on accounts not paid within thirty days of being billed under the account contracts executed by his customers. In point of fact, the retailer seldom imposes this charge, and, when he does add it to a customer's account, the fee is intended to encourage payment of the account rather than to represent a charge for credit extended. Your letter indicates that, in a typical billing period, the fee is imposed on approximately six per cent of the accounts which are thirty days or more overdue. The retailer does not regard such overdue accounts as being in default but usually continues to allow overdue account customers to make purchases on the account. You have inquired as to whether such a fee is a late payment charge within the meaning of § 226.4(c) or whether it must be considered a finance charge under Interpretation § 226.401.

Under Interpretation § 226.401, a periodic charge imposed by a retailer for delaying payments of accounts must be treated as a finance charge within the meaning of § 226.4(a) where the retailer does not regard the delays in payment as default and continues to allow charges to the account. In such a situation, the retailer must be considered a creditor under § 226.2(m), and the arrangement is open end credit as defined in § 226.2(r). It is the opinion of the staff, as expressed in Public Information Letter 630, that such a periodic charge is a late payment charge within the meaning of § 226.4(c) only in those cases where the retailer considers the accounts in default after the prescribed time for payment and refuses to allow further charges on them until full payments are made.

Inasmuch as your client does not regard overdue accounts as being in default and allows overdue account customers to continue to make charges to their accounts, it is the view of the staff that the provisions of Interpretation § 226.401 are applicable and that the fee imposed is not a late payment charge under § 226.4(c). While the retailer does not impose such a fee on all overdue accounts, he does have a legal right to do so under the account contracts, and his intent in selecting which overdue accounts to charge the fee is not determinative of whether the fee is a finance charge under § 226.4(a) or a late payment charge under § 226.4(c).

Since your client's plan must be classified as open end credit under Interpretation § 226.401, all of the disclosures required by § 226.7 must be made.

Excerpts from FRB Letter of March 26, 1975, No. 883, by Jerauld C. Kluckman, Chief, Fair Credit Practices Session.

NUMBER 20

In your letter *** you ask whether a creditor must disclose the cost of obtaining a credit report as a component of the finance charge where the creditor bears the cost of obtaining the report as an expense of doing business and makes no attempt to charge such a cost to the borrower by increasing the amount of the loan accordingly.

Under § 226.4(a)(5) of Regulation Z, a credit report fee paid directly or indirectly by the customer would be considered a finance charge. In your example, the cost of the report is neither assumed directly by the customer nor passed along to him indirectly through an increase in the amount financed. Although not stated in your letter, it is also assumed the general interest rate on the loan would not be increased to directly reflect the cost of the report. In such instances, we agree with your conclusion that the fee for the credit report should not be considered a separate component of the finance charge to be itemized and disclosed.

Excerpts from FRB Letter of May 20, 1975, No. 895, by Susan B. Collins, Attorney, Fair Credit Practices Section.

NUMBER 21

This is in response to your letter *** in which you asked about the offering of cash discounts to both credit and cash customers. In particular, you asked whether a cash discount offered to cash customers must be offered in like amount to credit card customers.

Regulation Z in § 226.4(i)(1)(ii) requires that a discount must be available to all prospective buyers whether or not they are cardholders. One of the purposes of § 226.4(i) is to permit a merchant to induce customers to pay by cash instead of with a credit card by offering a discount for cash. While the discount must be available to all prospective purchasers without regard to whether they are cardholders, in operation, the discount will only be given to those customers who elect to pay by cash. Those customers who elect to use a credit card will pay the full tag, posted, or advertised price of the property or services.

Excerpts from FRB Letter of November 25, 1975, No. 958, by Mark S. Medvin, Attorney, Fair Credit Practices Section.

NUMBER 22

I am writing in response to your letter of November 3 to Chairman Burns. You were concerned about "cash and carry" discounts of one or two per cent which might be offered in addition to a five per cent cash discount permitted by § 226.4(i) of Regulation Z. Your question is whether a cash and carry discount which might raise the total discount over five per cent would remove the transaction from coverage under § 226.4(i) and require certain point of sale finance charge disclosures.

The discount envisioned under § 226.4(i) is one which must be made available to all prospective buyers who choose to pay cash *instead of using a credit card.* In operation, the merchant is permitted to grant a discount not exceeding five per cent to those customers who pay cash without disclosing that discount as a finance charge for credit sales.

Whether the "cash and carry" discount of one or two per cent which you described must be included in the total amount of a cash discount will depend upon its availability to the merchant's customers. If the discount for transporting their own material is available to all customers of the merchant regardless of whether they use cash or credit to make payment, then this discount would not have to be included as part of the cash discount under § 226.4(i). This is so because such a discount would be offered not because of which payment mechanism the customer chose but rather because the customer decided to transport the merchandise himself instead of having it delivered by the merchant. However, if the cash and carry discount is only available to customers who choose to pay by cash, then, in the opinion of staff, such a discount would have to be included in the calculation of a cash discount under § 226.4(i). This is so because under these circumstances the effect of offering the "carrying" discount is to encourage customers to pay by cash. It is assumed that in this latter case a customer who pays with credit and transports the merchandise himself will not receive the carrying discount.

Excerpts from FRB Letter of December 9, 1975, No. 972, by Jerauld C. Kluckman, Assistant Director.

NUMBER 23

In connection with comments received *** regarding the Fair Credit Billing Act and the Board's implementing amendments to Regulation Z, your letter *** in which you outline some of the provisions of Fair Credit Billing *** has come to our attention.

I am enclosing a copy of the Board's Regulation Z for your reference, since some of the issues presented in the *** letter appear, in staff's view, to be somewhat misleading. For example, the only requirement for the posting of signs in a merchant's place of business is when that merchant offers discounts for payment in cash. In this case, the signs do not have to explain consumer credit rights but merely inform all prospective customers that a discount is available for payment in cash.

In connection with the cash discount provisions, there is nothing in the Regulation which requires merchants to offer cash discounts nor which prohibits a merchant from offering such discounts in excess of five per cent. The Act and the regulations merely provide an exception to Truth in Lending requirements by permitting merchants to offer cash discounts up to five per cent. The Act and the regulations merely provide an exception to Truth in Lending requirements by permitting merchants to offer cash discounts up to five per cent without having to make certain point-of-sale Truth in Lending disclosures of the entire amount of the discount to those customers using credit cards in their purchases.

Should you have any questions regarding the implications of the Fair Credit Billing amendments to association members, I suggest that you contact the Bureau of Consumer Protection of the Federal Trade Commission, since that agency has jurisdiction over retail organizations.

Excerpts from FRB Letter of December 31, 1975, No. 985, by Jerauld C. Kluckman, Assistant Director.

NUMBER 24

I am pleased to respond to your letter of June 7, 1971. You enclosed a copy of your remarks made in the Congressional Record of June 7, concerning the use of the 360-day year in calculating interest, and asked that we review the propriety of this practice, its effect on the customers of banks, the need for legislative or regulatory action to curb the practice and the failure to disclose to customers of banks that the practice is being used.

In discussing the propriety of the use of the 360-day year in the computation of interest on loans, it seems appropriate to define the areas of application involved. Both the 360- and the 365-day years have proper places in computing interest on loans. Which basis is used depends upon the type of the loan and the practice of the creditor.

Categories of Loans

Loans can be divided into two basic categories:

(1) The first category includes installment obligations, including both typical consumer loans and typical real estate mortgages, which are payments of principal and interest. The finance charge may be precomputed, or it may be computed when each payment is received. In both cases, payments are usually made monthly, all months are treated as equal periods of time, and finance charges are not assessed on the basis of actual number of days between payments.

First Category

In the case of one group of loans in category (1), in which the finance charge is computed in advance and added to the amount of the obligation, it is common practice among financial institutions to use a 360-day year to compute interest. In fact, practically all commercially available monthly payment tables used to compute finance charges on conventional installment loans are constructed on the basis of each month being an equal period of time, 30 days, and a year equal to 12 months of 30 days each of 360 days.

One might ask what happens to the other five days in a year. If the loan contract runs, for example, three years and is payable in 36 equal installments on the tenth day of each month, the five days each year are included in the full repayment period without any additional finance charge being imposed. The rate is a "per annum" rate and the number of days in a year is irrelevant.

Also, in category (1) is the second group of loans on which interest is computed each month or other fraction of a year (except daily), for example, a real estate mortgage. Whichever period is involved, it is considered to be equal to every other such period. In the case of monthly computations, interest may be computed from the fifteenth of the preceding month to the fifteenth of the current month, treating the intervening period as 30 days regardless of whether the actual number of days involved is 28, 30, or 31. A three-month loan will involve finance charges of one-quarter of the amount calculated from application of an annual rate, a six month loan, one-half of that amount, and so on. The actual number of days in the particular period is ignored. It makes no difference in the amount of the finance charge for the year where the creditor considers and treats each month as a period of 30 days.

Generally, the computation of the finance charge is made by use of tables which are based uipon equal payment periods. Each year is treated as 12 months of 30 days each in the preparation of monthly payment tables. The effect is that the finance charge per year is no greater by the use of the 360-day method than by use of the 365-day method, if neither is mixed in its application. This conclusion can be demonstrated by the enclosed comparative table showing a $1,000 loan on which the interest is computed first on a 365-day basis compared with the interest on the same loan computed on a 360-day basis, both at a stated rate of 12% per annum. In the 365-days-per-year computation, the factor for computing interest is 12% divided by 365 which equals .0003287671 (per day). In the 360-days-per-year computation, the factor is 12% divided by 360 which equals .0003333333 (per day). The amount of interest over the year is exactly the same in both cases. If, however, the two methods are mixed so that the 360-day factor is applied on the basis of the actual number of days, that is, 365 days in a year, the result is different, *e.g.*, .0003333333 x 365 = .12166665 or 12.17% or a total interest charge of $121.67 for the year instead of $120.00 for the same stated 12% rate.

In accordance with the foregoing discussion, it appears that there can be little, if any, objection to the use of a 360-day year for the purpose of computing interest on loans in category (1).

Second Category

Loans in category (2) pose a different situation. The finance charge is not precomputed on such loans. Although there may be a schedule of equal periodic payments, or the loan may be what is known as a "single payment obligation," interest is computed on the basis of the actual number of days from date of last payment to date of current payment. Where interest is computed rrom time to time on the basis of the number of days the principal balance remains unpaid, 365-day interest tables and factors may be employed. In any case in which interest is computed on actual days, months then are not equal periods of time and interest is computed for the extra day in 31-day months and for two days less in February. The use of a 360-day interest table or factor in such cases can result in a slightly greater amount of finance charge for a given stated interest rate. In fact, the increased rate of return to the creditor of such use is equal to 1.39% of the stated rate; thus a stated 6% rate would produce a return of 6.0833%; 8% would produce 8.1111%; 10% would produce 10.139%; and 18% would produce 18.25%.

Irrespective of the amount of additional return involved by applying a 360-day factor to the actual number of days, the law of several States sanctions such application.* Whether or not the use of the 360-day interest factor to compute the amount of a finance charge is sanctioned under State law, there is the question as to whether the matter should be made the subject of further Federal legislation.

Truth in Lending and Consumer Transactions

Under the Truth in Lending Act, the amount of the finance charge, however computed, must be disclosed and expressed as an annual percentage rate in consumer transactions. The annual percentage rate must be disclosed with an accu-

*Arkansas, Connecticut, Maryland, Minnesota, New Jersey and South Dakota.

racy at least to the nearest quarter of 1%. Thus any deviation in the method of computing the finance charge is reflected in the annual percentage rate if the effect is more than minimal. For example, if the rate of finance charge by one method results in an annual percentage rate of 8.02% and a finance charge computed by another method results in an annual percentage rate of 8.11%, both of these rates may be rounded to the nearest quarter of 1% and disclosed as 8%. However, if under one method of computation the annual percentage rate is 8.03% and under another method, 8.13%, the first may be disclosed as 8%, while the second may be rounded up to 8¼% for disclosure. When a stated interest rate exceeds 9%, the application of a 360-day factor to the actual number of days between payments affects the annual percentage rate which must be disclosed to the customer even after rounding.

Commercial Loans

The 360-day method is used extensively in category (2) type commercial transactions not subject to Truth in Lending. However, Congress excluded business transactions from the scope of Truth in Lending on the apparent assumption that commercial borrowers were a sophisticated group able to protect themselves and not in need of the protection afforded by the Act.

Conclusions

It is unlikely that the use of the 360-day method of computation of interest would adversely affect the consumer where it is employed in connection with the typical personal loan, or installment contract, or residential mortgage loan.

The consumer is usually affected only in those relatively few loans where the amount of the finance charge or interest is computed on a daily basis, and even in these instances the effect will normally be reflected in the annual percentage rate disclosed to the customer pursuant to the requirements of Regulation Z. In view of the complexity of any explanation of the 360-day v. the 365-day year in computing charges, disclosures of this kind of information could be more confusing than helpful to the customer. Truth in Lending has contributed a great deal toward greater consumer awareness of financing costs and the Board does not feel that further Federal regulatory action is needed beyond the present disclosures required by the Truth in Lending Act. Also,it is felt that any problems which arise out of the use of the 360-day method by lenders in commercial transactions are not of the kind to require special legislative or administrative actions at this time.

We hope that the foregoing comments will be helpful to you in your consideration of the matter.

NUMBER 25

This is in response to your letter of May 2 regarding a plan which you described as follows:

As part of a marketing program we wish to offer a 10% refund on interest paid on installment loans. Everyone who takes out these loans will get the refund. The refund will be based on 10% of the interest paid at the time of termination or expiration of the note. There is no requirement for satisfactory repayment as a condition of the refund. For example: A $1,000 installment loan for 12 months with $92.00 of interest will be paid back in 12 monthly installments of $91.00. At the end of the twelfth month the customer would get a check for $9.20

The staff views this plan as involving a required deposit balance under Regulation Z which is paid periodically by the customer. For Truth in Lending disclosure purposes, the required deposit balance of $9.20 must be deducted in determining the amount financed to be disclosed as provided in § 226.8(d)(1) and (2). Inasmuch as the loan involves two advances, an immediate one for $1,000 and a final one of $9.20, the "amount financed" would be $1,000 ($1009.20 — $9.20). The finance charge is the difference between the loan advances and the loan payments or $82.80 (91 x $12 = $1092 — $1009.20 = $82.80).

For purposes of computing the annual percentage rate, the provisions of Supplement I apply. Example 3(iii) on Page 12 of Supplement I illustrates the annual percentage rate computations under such circumstances. *** Also, Volume II of the Board's Annual Percentage Rate Tables can be used to compute annual percentage rates for these types of transactions.

Excerpts from FRB Letter of May 24, 1974, No. 802, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 26

***, you questioned whether using asteriks with the terms "FINANCE CHARGE" and "ANNUAL PERCENTAGE RATES" would meet the requirement of § 226.6(a) of Regulation Z that such terms be printed more conspicuously than the other terminology required by the Regulation. You propose that the asterisks would be used to mark the two terms more conspicuously than the other required terminology listed on a computer print-out form on which all terms are shown in the same type size. We believe that your proposal to use the asterisks complies with the requirements of § 226.6(a).

We note in the sample that you sent from another bank that the wording "notice—see reverse side for important information" was also emphasized by the use of asterisks. Since asterisks are used to make the terms "FINANCE CHARGE" and "ANNUAL PERCENTAGE RATES" more conspicuous than the other required terminology, the asterisks should not be used in conjunction with the other required terminology.

Excerpts from FRB Letter of March 26, 1971, No. 462, by Griffith L. Garwood, Attorney.

(Enclosed Comparative Table)
Table Comparing Interest Computed By 365-Day and 360-Day Methods
and a Mixture of the Methods (Applying a 360-day Factor for 365-Days)
(1,000 Loan for 1 Year at 12% Per Annum)

	365-Day Method		360-Day Method		Mixture of Methods (360-Day Factor for 365-Days)	
Date	Number of Days (Actual)	Interest (.0003287671 Per Day)	Number of Days (Equal Months)	Interest (.0003333333 Per Day)	Number of Days (Actual)	Interest (.0003333333 Per Day)
Feb. 17	31	10.19178	30	10.00000	31	10.33333
Mar. 17.....	28	9.20548	30	10.00000	28	9.33333
Apr. 17	31	10.19178	30	10.00000	31	10.33333
May 17	30	9.86301	30	10.00000	30	10.00000
June 17	31	10.19178	30	10.00000	30	10.33333
July 17	30	9.86301	30	10.00000	30	10.00000
Aug. 17.....	31	10.19178	30	10.00000	31	10.33333
Sept. 17.....	31	10.19178	30	10.00000	31	10.33333
Oct. 17	30	9.86301	30	10.00000	30	10.00000
Nov. 17.....	31	10.19178	30	10.00000	31	10.33333
Dec. 17	30	9.86301	30	10.00000	30	10.00000
Jan. 17	31	10.19178	30	10.00000	31	10.33333
Totals	365 Days	$119.99998	360 Days	$120.00000	365 Days	$121.66664
Interest Rounded to Nearest Cent		$120.00		$120.00		$121.67

FRB Letter of September 3, 1971, No. 359 by J. L. Robertson.

NUMBER 27

Your letter of November 26, 1973, raising a question under Regulation Z, which was addressed to the Federal Reserve Bank of Atlanta, has been forwarded to the Board for reply. You inquire whether § 226.6(i) of Regulation Z would require a creditor to keep a copy of each periodic billing statement mailed to a customer under an open end credit plan or whether it is sufficient that the creditor simply preserve records, such as the account ledger, from which the periodic statement was made.

As indicated by the enclosed staff letters the requirements of § 226.6(i) may be met by any acceptable method for retaining business records such as photo copies or microfilm which would enable an enforcement agency to check compliance. In the case of a billing system utilizing bookkeeping machines, this could be accomplished by retention of the journal tape along with a sample of the billing form used to make disclosures.

Excerpts from FRB Letter of January 4, 1974, No. 745, by Griffith L. Garwood, Adviser.

NUMBER 28

This is to confirm our telephone conversation of ***, discussing several isues relating to the Board's regulations implementing the Fair Credit Billing Act.

An issue that you raised relates to "remote locations" under § 226.6(k)(1). Staff would review for the purpose of these requirements a remote location to be any location other than a location where an application for credit is accepted and a credit determination is made. Staff is of the view that the problems requiring such transition periods with respect to the notice required under § 226.7(a)(9) could be equally applicable to branch banks, outlying stores, and other remote locations, as they are to catalog. Consequently, staff would view any location other than where the creditor accepts applications for credit and makes the determination for credit as a remote location.

Excerpts from FRB Letter of October 23, 1975, No. 933, by Jerauld C. Kluckman, Assistant Director.

NUMBER 29

This is in response to your letters *** and *** in which you raised a number of questions regarding the applicability of the numerical type size requirements of § 226.6(a) to four provisions of Regulation Z. They are discussed in order of appearance in the Regulation.

1. The first question is whether the numerical type size requirements of § 226.6(a) apply to the paragraph numbers of § 226.7(a)(9). Since paragraph numbers are primarily an organizational device and their purpose simply is to facilitate a logical reading of the statement prescribed by § 226.7(a)(9), it is the staff's opinion that the paragraph numbers of § 226.7(a)(9), including the reference to paragraph "5" which appears in the text of § 226.7(a)(9), are not subject to the numerical type size requirements of § 226.6(a).

The intent and purpose of § 226.6(a) is to furnish the customer a clear and meaningful disclosure of the information relevant to credit transactions. The staff believes that subjecting the paragraph numbers of § 226.7(a)(9) to the requirements of § 226.6(a) would not contribute significantly to such a purpose.

2. The basis for the next question is § 226.7(b)(1)(viii) which requires, in part, that the creditor send the customer, for each billing cycle, a statement which indicates the balance on which the finance charge was computed by reference to a numbered box appearing on the statement. The numbered box contains the figure representing the balance upon which the finance charge was computed. Such box numbers are not required by either the Act or the Regulation; like paragraph numbers they are primarily an organizational device. It is the staff's opinion that such box numbers are not subject to the numerical type size requirements of § 226.6(a).

3. With regard to § 226.7(g)(2), which states that the creditor may specify, on the periodic statement or accompanying material, reasonable requirements with respect to the form, amount, manner, location, and time for receipt of payment, you ask whether the creditor must specify the time, i.e., the hour, in accordance with the numerical type size requirements of § 226.6(a). The staff believes that such a numbered quantity is subject to the numerical type size requirements of § 226.6(a) in that it contributes to a clear and meaningful disclosure of credit information.

4. The final question concerns § 226.7(g)(3) which states that if the creditor accepts payment at locations other than those specified under § 226.7(g)(2)(ii), the creditor shall credit the customer's account promptly (in no case later than five days from the date of receipt), provided that the possibility of such delay is clearly disclosed to the customer on the periodic statement or on accompanying material.

You question whether the number "5," as it appears on the regulation to notify the customer of the delay described, is subject to the numerical requirements of § 226.6(a). In accordance with Public Information Letter 1029, staff believes that such a time period specification is subject to the numerical type size requirements of § 226.6(a).

Excerpts from FRB Letter of July 15, 1976, No. 1085, by D. Edwin Schmelzer, Acting Chief, Fair Credit Practices Section.

NUMBER 30

When a retailer's credit sales are not paid within a definite period of time (such as over 60 days past due) and the retailer does not regard such accounts as in default, but continues or will continue to extend credit and imposes charges periodically for the late payment condition, the charges are definitely "finance charges" and the seller is actually operating an open end credit plan. This type of credit extension would require all the applicable disclosures described in section 226.7 of Regulation Z.

When a retailer's credit sales are basically 30 days net, there is no finance charge (or late charge), and there are no payment schedules for more than four installments, the program is not under Regulation Z.

From the above you can select a policy that will determine your company's status with this new law. At the time we discussed this situation I was under the impression you operated on a "30 days net" basis, and that when you imposed the late charge, you cut off that customer's credit. If that is the case, you are not under an open end credit plan, and if you do not schedule payments in more than four installments, the plan which you describe does not come under Regulation Z.

Excerpts from FRB Letter of June 10, 1969, by Milton W. Schober, Assistant Director.

NUMBER 31

This is in reference to your letter of May 20, 1969, inquiring whether installment credit coupon book plan falls within open end credit as defined in § 226.2(r).

It is my understanding that under the plan a customer purchases a book of credit coupons for a total set amount, for example $50. The purchase obligates the customer to repay the $50 plus precomputed interest over a predetermined repayment period in installments. While the customer is immediately entitled to use the credit coupons to purchase merchandise, whether he does so or not is immaterial with regard to his obligation to repay. Neither the period of repayment, installment amounts, or payment dates are determined by the customer's actual use of the coupons. It would in fact be possible for him to have fully repaid the obligation and not have used any coupons.

While this type of plan would satisfy the first requirement for open end credit, that is, that the customer is permitted to make purchases from time to time, your plan does not contemplate the existence of an account under which there will be repetitive transactions on a revolving basis (see interpretation § 226.203). Furthermore, it does not meet the crucial third criteria under § 226.2(r) that "a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance."

Accordingly it is my opinion that your plan would not meet the tests of § 226.2(r) for open end credit and disclosures would have to be made under § 226.8—*Credit other than open end—specific disclosures.*

Excerpts from FRB Letter of July 1, 1969, No. 24, by Griffith L. Garwood, Attorney.

NUMBER 32

Thank you for your letter of May 19, in which you request clarification of the Board's interpretation of April 22, regarding service charges on accounts not paid within a given period of time.

We have very carefully reviewed the policy followed by *** in the treatment of past due accounts, and have reached the conclusion that the delinquency charge, when imposed during a period of time that additional purchases may be made, must be considered a finance charge.

Under these circumstances, such accounts are subject to the provisions of Regulation Z.

Excerpts from FRB Letter of June 9, 1969, by Robert P. Forrestal, Assistant Secretary.

NUMBER 33

This is in reply to your letter of October 1, 1969, in which you request an opinion as to whether your bank's plan to recycle its credit card accounts will be in compliance with Regulation Z as it relates to disclosures to be made in connection with the plan.

As we understand the proposal, in all cases where a billing cycle is to be changed, such recycling of accounts would involve a lengthening of the first billing period in the new cycle from 1 to 29 days. If on or before the new date payments are due the customer pays in full any balance in his account, no finance charge will be imposed for the additional days in the lengthened first cycle. However, if less than any full balance is paid, the periodic rate or rates will be prorated over any days in addition to a regular billing cycle included in the first cycle so that the annual percentage rate or rates will be the same as if no additional days were included in the first cycle. Also you intend to provide the notice to customers required under § 226.7(e) of Regulation Z.

Based upon the foregoing statement of our understanding, and provided the notice includes a clear explanation of the change and the manner in which it will be accomplished, we believe that the proposed procedure for recycling accounts would not conflict with the requirements of Regulation Z.

Excerpts from FRB Letter of October 17, 1969, No. 164, by Milton W. Schober, Assistant Director.

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Thank you for your letter of May 19, in which you request clarification of the Board's interpretation of April 22, regarding service charges on accounts not paid within a given period of time.

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Based upon the foregoing statement of our understanding, and provided the notice includes a clear explanation of the change and the manner in which it will be accomplished, we believe that the proposed procedure for recycling accounts would not conflict with the requirements of Regulation Z.

Excerpts from FRB Letter of October 17, 1969, No. 164, by Milton W. Schober, Assistant Director.

NUMBER 34

The problem you raised had to do with credit sales of silverware and certain other specified merchandise. *** offers only one type of credit plan which is designated as its "All Purpose Charge Account." That plan is a typical open end credit account plan in which a finance charge is computed on an unpaid balance each billing cycle and the specified minimum monthly payment is 1/10 of the new balance. *** does not offer "other than open end credit."

Due to competitive conditions existing in the California market, *** periodically permits customers to charge purchases of silverware (and other specified merchandise) to their all purpose account with the understanding that the store will waive any finance charge on the portion of the account balance representing charges for such merchandise. You inquire whether the special purchases must be treated as "credit other than open end" outside the scope of your open end account because of the waiver of finance charges on these items.

You point out that the customer has only one account card, one account number, and, in fact, only one account. A customer must have an "All Purpose Charge Account" in order to avail himself of the special silverware purchase plan.

We agree that silverware purchases remain a portion of your open end credit plan, which itself meets all three of the criteria for open end credit under the provisions of § 226.2(r) of Regulation Z and need not be treated separately as credit "other than open end." Under your plan, the customer is permitted to make purchases, both of regular merchandise and of silverware, from time to time, the customer has the privilege of paying the balance in full or in installments; and a finance charge may be computed by the store from time to time on an outstanding unpaid balance. Although finance charges are waived on the outstanding balance for the silverware purchases, that charge is not waived on the remaining balance of the account. The third criterion under § 226.2(r) does not, in our opinion, require that the finance charge be imposed on the entire outstanding balance.

Excerpts from FRB Letter of May 27, 1970, No. 336, by Milton W. Schober, Assistant Director.

NUMBER 35

We are pleased to respond *** regarding Truth in Lending disclosures on the periodic billing statements issued for open end credit accounts.

Specifically, you questioned whether it would be permissible to include both "charges" and "credits," other than payments, in the same column on a billing statement. You indicate that your client intends to place terminology at the bottom of that column indicating that the "charges" listed in the column are printed in black and that the "credits" are printed in red.

Assuming that the other disclosures are made in accord with Section 226.7(b) and that no other figures are printed in red ink, we believe that your proposal meets the requirements of Section 226.7(b)(3).

Excerpts from FRB Letter of April 24, 1970, No. 311, by Milton W. Schober, Assistant Director.

NUMBER 36

Your first question deals with the Board's position that reaffirmations of debts discharged in bankruptcy are subject to the disclosure requirements of Regulation Z. In view of the many letters we have received similar to yours, we are presently engaged in reconsidering this position to see if it comports with the purposes of Truth in Lending. We will be pleased to inform you of any change.

Your second question deals with the requirements of § 226.7(a) regarding the initial disclosure to be made on an open end credit account. Your client's policy is to permit a noncash customer to pay for all purchases at the cash price within 30 days of billing. Any unpaid balance after 30 days is subject to a finance charge with your client retaining the right to require payment in full at any time. Your question is whether the disclosures required under § 226.7(a) may be made on the back of the sales slip representing the initial transaction together with a statement on the front of the slip that important credit information is contained on the opposite side.

It has been our position that the "single written statement" provision of § 226.7(a) would not be satisfied by such a procedure. Our experience has been that the amount of information required in that section can rarely be printed on the reverse side of a sales slip in such a manner as to be readily discernible by the customer. To insure that the disclosure is both "clear and conspicuous" and given "before the first transaction is made" on the account, we believe that a separate statement is necessary. Compared to the total number of transactions made by your client, the occassions in which this disclosure must be given for the type of arrangement you describe would be relatively few. For these reasons, we believe that the benefits to the customer outweigh any burden on the creditor.

Excerpts from FRB Letter of September 3, 1970, No. 400, by Tynan Smith, Assistant Director.

NUMBER 37

This is in response to your inquiry of August 21, 1970, addressed to Mr. Milton W. Schober, regarding an apparent conflict between Public Information Letter number 220 (CCH paragraph 30,543) and Interpretation 226.703.

Section 226.7(b)(8) of Regulation Z requires the creditor of an open end credit account to disclose "the balance on which the finance charge was computed, and a statement of how that balance was determined." Interpretation 226.703 was intended to explain how this provision could be complied with in situations involving the application of a periodic rate to an average daily balance. It deals with two separate situations: application of a *monthly* periodic rate to a daily balance.

Letter number 220 dealt only with the situation in which a creditor applies a monthly rate to the average daily balance; it was not intended to apply to the application of a daily rate. That letter stated, consistent with Interpretation 226.703 that the requirements of § 226.7(b)(8) would be satisfied in the monthly rate situation by the statement that the finance charge was computed on the average daily balance; no additional narrative would be necessary. Interpretation 226.703 sets out three alternative disclosures which would satisfy the requirements of § 226.7(b)(8) in the daily rate situation. From the discussion in your letter, it is apparent that your client calculates the finance charge by the application of a daily rate against a daily balance. If this is true, and he chooses to disclose on the billing statement by giving the average daily balance, he would also be required to state 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 order to comply with § 226.7(b)(8).

In summary, if a creditor in an open end credit account applies *monthly* periodic rate to the average daily balance, he may satisfy the requirements of § 226.7(b)(8) by merely disclosing that the finance charge was computed on the "average daily balance." However, if the creditor employs a *daily* periodic rate and wishes to use the average daily balance alternative provided in Interpretation 226.703, he must also add the language in subparagraph 3 to comply with the requirements of § 226.7(b)(8).

Excerpts from FRB Letter of September 16, 1970, No. 406, by Tynan Smith, Assistant Director.

NUMBER 38

In commenting on the Board's proposed amendment to § 226.7(e), you mentioned that the amendment might also spell out the type of notice required when the creditor of the open end credit account changes the maximum amount of credit available to the customer. It is our view that the provisions of § 226.7(e) require a notice only in those cases in which the creditor is changing a term which was previously disclosed to the customer pursuant to § 226.7(a). Therefore, since the maximum amount of credit available is not required to be disclosed under that section, paragraph (3) requires no advance notice before it is either increased or decreased.

Excerpts from FRB Letter of November 30, 1970, No. 428, by Tynan Smith, Assistant Director.

NUMBER 39

This is in response to your letter *** concerning the requirements of § 226.7(c) of Regulation Z.

On each periodic statement under an open end account, the creditors must disclose the balance on which the finance charge was computed and provide a statement of the method of determining that balance. In making this disclosure the creditor is limited as to location of the disclosure only by the provisions of § 226.7(c)(2) which require a reference to this balance to be disclosed together with the periodic rate, annual percentage rate and a reference to the amount of the finance charge. It is certainly permissible to place the amount of this balance on the face of the periodic statement and a description of the method of determining that balance on the reverse side.

Your client is presently contemplating a modification of the method of computing the finance charge with respect to amounts for purchases and cash advances. In your telephone conversation, you brought up the problem of using up existing forms. Your client presently has in stock many forms which are designed to provide the disclosures required by § 226.7(a). These forms contain the method of computing the finance charge presently in use. Your question is whether these forms may be used up together with an insert which will explain the modifications. In our view, such a procedure would be acceptable, as long as the modifications were made clearly and conspicuously on the insert.

Excerpts from FRB Letter of March 18, 1971, No. 458, by Griffith L. Garwood, Attorney.

NUMBER 40

This is in response to your letter of March 15, 1971, regarding an alleged violation of the Truth in Lending Act by ***. You indicate that an agent of your office, upon being offered an application for a credit card issued by ***, was not able to obtain the Truth in Lending disclosures relating to the operation of the account.

Section 226.7(a) of Regulation Z prescribes that the initial disclosures for open end credit must be given to the customer "before the first transaction is made ..." Consequently, the bank's failure to provide the § 226.7(a) disclosures at the time of offering the application for a credit card would not constitute a violation of Regulation Z. We assume that the bank issues the required disclosures before the first transaction is made on the account. In the event this is not the case, we would appreciate your letting us know so that we may follow-up on the matter.

Excerpts from FRB Letter of April 12, 1971, No. 470, by Griffith L. Garwood, Attorney.

NUMBER 41

This is in reply to your letter of April 14, 1971, raising a question under § 226.7(c)(3) of Regulation Z. Your client who uses descriptive billing on monthly statements sent to its charge card customers, has an "overflow" printing on some 5% of those statements. When all of the customer's purchases cannot be fitted onto one statement, two statements are printed and sent. However, only one of the two statements shows the finance charge, new balance, etc. Your question is whether it would be appropriate to print on the form "NOTICE: See reverse side and accompanying statement(s) (if any) for important information." You are concerned about modifying the language required by § 226.7(c)(3) by the addition of "(if any" after the word "statement(s)."

It is the staff's view that the required terminology in the Regulation, wherever found, must be used by all affected creditors without modification. However, there appears to be a simple solution to your problem. That would be to program the computer to specifically indicate on the master statement when an accompanying statement will be used. The computer printout would have the additional advantage of more directly alerting customers to the existence of a second statement.

Excerpts from FRB Letter of May 19, 1971, No. 477, by Griffith L. Garwood, Attorney.

NUMBER 42

In reviewing the credit plan that you have described in your letter, we believe that the plan meets the definition of open end credit as stated in § 226.2(r) of Regulation Z. The mere fact that the creditor does not automatically release funds up to the prescribed agreed maximum without further consideration of each advance would not, in itself, exclude the plan from being an open end credit plan.

In response to your other question, since you intend to compute your finance charges on daily basis, (what you call the "Daily New Balance" method), the periodic rate which you disclose should be a daily rate. The annual percentage rate to be disclosed would be the daily periodic rate multiplied by the number of periods in a year, or in your case, 365 days.

Excerpts from FRB Letter of May 24, 1971, No. 481, by Griffith L. Garwood, Attorney.

NUMBER 43

You inquire whether the disclosures required under § 226.7(a) must show the terms "finance charge" and "annual percentage rate" more conspicuously than the other required terminology pursuant to § 226.6(a). Section 226.6(a) provides that "where the terms 'finance charge' and 'annual percentage rate' are required to be used, they shall be printed more conspicuously than any other terminology required by this Part." Section 226.7(a) provides that the disclosures required by that section must be made "in terminology consistent with the requirements of paragraph (b) of this section ..." Paragraph (b) specifically requires the use of a variety of terms including "finance charge" and "annual percentage rate."

In the staff's view, reading these sections together, a creditor would be required to print the "finance charge" and "annual percentage rate" more conspicuously than the other terminology required by § 226.7(a).

Excerpts from FRB Letter of August 18, 1971, No. 517, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 44

The question has been raised whether verification of previously furnished credit information in connection with an individual's new purchase under what is nominally an open end credit plan, suggests that open end credit is not, in fact, being extended as it is defined in the Truth in Lending Act and Regulation Z. This raises the issue of whether such verification requires disclosures under § 226.8 of Regulation Z instead of § 226.7. The attachments to your letter of August 6, 1971, illustrate five types of verification common in the trade.

1. Reviewing the store's own ledger information to determine whether the customer has kept the account in good standing by paying the minimum payments required each month and by making the payments on time each month; or to determine if the proposed purchase would exceed the customer's previously established credit limit;

2. Updating the customer's credit information by having the store's credit manager interview the customer to determine if information given on the credit application at the time the account was opened is still correct, such as whether the customer still lives at the same address, whether the customer still works for the Blank Company, or whether the customer has any additional financial obligations;

3. Confirming new information obtained in the updating interview by calling first-hand sources such as the husband's new employer to confirm the fact of employment, or calling a finance company to confirm the amount of the monthly payments required on a newly purchased automobile;

4. Determining that the customer is current in meeting other obligations listed on the credit application, by contacting first hand sources such as calling the finance company to determine if the customer has been paying as agreed on the new automobile account, or calling the department store to determine if the customer has substantially increased the oustanding balance on the account;

5. Verifying information through a third-party, such as by securing a credit report from a credit bureau or asking the local bank or other firms not listed on the customer's credit application if the customer has any outstanding obligations with them.

It is our staff's view that such verification of credit information does not, in and of itself, mean that the creditor would be required to make other than open end credit disclosures under § 226.8. If a creditor's plan otherwise meets the definition of "open end credit" under § 226.2(r), disclosures under § 226.7 would be appropriate.

Excerpts from Letter of September 20, 1971, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 45

[Y]ou presented several questions with regard to disclosure of voluntary credit life insurance premiums under Regulation Z on an open end credit plan. The credit life plan giving rise to your questions provides that the premiums will be based on an average outstanding balance each month and that the premiums will not be subject to finance charges.

You question whether the following disclosure of the cost of insurance would fulfill the requirement of § 226.4(a) of Regulation Z:

"Decreasing credit life insurance coverage is not required by the Seller as a condition for the approval of credit. If customer desires to obtain decreasing life insurance coverage arising from purchases made under this revolving credit plan, the charges for such insurance shall be computed at the monthly rate of $0.00 of the average amount outstanding during the billing period:

I desire credit life insurance at the cost shown above.

_____ _____"

Date Customer

We believe the method of disclosure would be in accord with Regulation Z, however, the term "average amount outstanding" is nebulous and probably should be further defined to show precisely how that balance is computed—*e.g.*, average daily balance, etc.

You indicate that the minimum payments on an insured account are comprised of two elements. One is the minimum monthly payment for purchases and finance charges based on a schedule disclosed by the creditor, and the second element is the amount of credit life insurance premium for that billing cycle. The question arises as to how such minimum payments should be disclosed in accordance with § 226.7(a)(8). It is staff's opinion that the provisions of Regulation Z would be met if in addition to outlining the minimum required payments relating to purchases and the finance charge, the creditor clearly and conspicuously discloses that the amount of the minimum periodic payment will be increased if credit life insurance is elected and includes a statement of how the premiums will be computed.

Excerpts from FRB Letter of September 7, 1971, No. 522, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 46

*** questioned the application of § 226.7(e) of Regulation Z to your client's proposal which would allow customers in an open end credit plan the option of skipping the minimum periodic payment for a particular month. Those cardholders who exercise the option to skip the minimum periodic payment would not be assessed late charges, but finance charges would continue to be assessed in accordance with the terms of the plan. You indicate that you intend to notify the customers of this option and the fact that the usual minimum payment schedule and late charge provisions will again become applicable, as previously disclosed, the following month. We assume that for ease of administration such written disclosure to the customer will accompany the billing statement to which the reduced payment applies, or be sent prior to the issuance of that billing statement. Our answers are based upon this assumption.

It is staff's view that no notice is required under § 226.7(e) of the option to skip a payment, since that action is, in effect, the reduction in amount of minimum periodic payment, a change in terms which requires no disclosures under § 226.7(e). However, we believe that the subsequent increase to the previously disclosed minimum periodic payment schedule is a change in terms for which § 226.7(e) disclosures are required. However, this required notice can be accomplished, as you propose, by including it with the notification of the skip-payment option, which should meet the 15-day time requirement of § 226.7(e). Furthermore, it is staff's view that reference to "terms previously disclosed" is adequate in this instance and it is not necessary for the bank to restate all of the terms of its open end credit plan in the notice.

Excerpts from FRB Letter of October 29, 1971, No. 541, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 47

*** inquired whether an open end creditor who computes finance charges on the average daily balance must set forth on a periodic statement the difference between (1) the average daily balance and (2) the balance on which a finance charge would have been computed had payment been applied as of the first day of the billing cycle, *i.e.*, the "adjusted" balance. For example, if at the beginning of a billing cycle the cardholder has a balance of $100 and halfway through the cycle he makes a $50 payment, his average daily balance would be $75, rather than a figure of $50 which would have resulted if payment had been applied as of the first day of the billing cycle. The question arises under the language of the second sentence of § 127(b)(8) of the Truth in Lending Act and § 226.7(b)(8) of Regulation Z, which provides that "if the balance is determined without first deducting all credits during the billing cycle, that fact and all the amount of such credits shall also be disclosed."

It is our staff view that disclosure of the amount of the difference between the finance charge balance figure derived by means of the average daily balance method and that derived by means of the adjusted balance medthod is not required by the Act or Regulation Z. The legislative history of § 127(b)(8) of the Act clearly shows that the second sentence of this section was inserted because Congress felt that a consumer should be informed if his finance charges were computed on the "previous balance" method rather than on the "adjusted balance" method. In the previous balance method no adjustment, whatsoever, is made for credits received during the billing cycle (other than total payment) in computing the balance upon which finance charges are imposed. In contract, credits are, in fact, deducted before determining that balance under the average daily balance method. We do not believe that Congress intended for creditors using the average daily balance method to disclose the amount of the difference between this balance and the balance which would have been used if the adjusted balance method had been followed.

Moreover, there are sound reasons why such disclosures should not be required. It is highly questionable whether an intelligible explanation of this disclosure could be made on the periodic statement. Any explanation would have to compare and contrast the average daily balance method with the adjusted balance method and would probably not be meaningful unless a specific example were given. We believe that such an explanation, accompanied by the many other disclosures which are already required by § 226.7, would substantially increase the complexity of present disclosures, to the detriment of the public.

Excerpts from FRB Letter of January 21, 1972, No. 567, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 49

You inquired whether the Regulation requires that the total of "payments" be shown as one total and the total of "credits" be shown as a separate total, or whether the total amount of the "payments" "and credits" should be combined. We believe that the provisions of § 226.7(b)(3) require the creditor to identify "payments," either individually or as a total, as well as identify "credits" individually or as a total. There is no requirement that a combined total of payments and credits be computed and disclosed. In response to your question about the corresponding statutory provision, the flexibility of the regulatory requirements is the product of the exercise of the Board's authority in § 105 of the Act.

Interpretation § 226.701 was directed precisely to the second problem you present. The Interpretation provides that there is no requirement for a creditor to disclose the amount of the finance charge produced by the application of each periodic rate, when more than one periodic rate is applied during the billing cycle. The provision of Regulation Z to which it was directed (§ 226.7(b)(4)) was likewise issued by the Board pursuant to its authority in § 105 of the Act.

Excerpts from FRB Letter of March 14, 1972, No. 582, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 50

You indicate that your credit card program involves both purchases and cash advances to which periodic rates apply. You question whether it is necessary under Regulation Z to show separately (1) the finance charge on purchases, (2) the finance charge on cash advances, and (3) the total finance charge. Under your plan all of the finance charges arise from the application of step periodic rates to a total unpaid balance, which may be a mixture of purchases and cash advances. You raise the question because § 226.7(b)(4) requires the periodic statement to show the finance charge "itemized and identified to show the amounts, if any, due the application of periodic rates."

Section 226.7(b)(4) was designed to require the creditor to separate those finance charges which were due to the application of periodic rates from other non-periodic rate components of the finance charge, such as minimum, fixed, check service, transactions, activity or similar charges. It was not designed to require itemization of the individual portions of the total finance charge which may be attributable to the application of different periodic rates. In this connection see Interpretation 226.701. Likewise, it was not designed to require separate disclosure of cash advance and purchase components of the total finance charge when that total is the product of the application of a periodic rate or rates.

Your second question pertains to § 226.7(b)(6) and specifically the requirement that where more than one annual percentage rate is shown "the amount of the balance to which each rate is applicable" must be given. your bank expects to use the following chart preprinted on the periodic statement. You inquire whether the chart satisfies this requirement of § 226.7(b)(6).

Periodic Rates	*Balance To Which Applicable*		*Annual Percentage Rates*
1.25%	On first	$ 500	15.00%
0.95%	On next	$ 500	11.40%
9.83%	Amount over	$1,000	9.96%

If you assume that at the end of a billing cycle a cardholder owes a total of $815, you question, by way of illustration, whether it is necessary to show somewhere on the periodic statement in addition to the chart that the first $500 (of the $851) is subject to an annual percentage rate of 15% and that the next $351 of the $851 is subject to an annual percentage rate of 11.40%, or whether the chart itself is sufficient. It is our staff opinion that such an itemization of the balance to which the periodic rates apply is unnecessary and that the language in § 226.7(b)(6) to which you refer is satisfied by the chart given in your example. In other words we believe that disclosure of the range of balances to which the annual percentage rates apply satisfies this requirement of § 226.7(b)(6).

Excerpts from FRB Letter of April 17, 1972, No. 592, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 51

This is in reference to an agreement between (bank) and (x) Corporation under which the bank has agreed to extend open end credit as defined in Regulation to "members" of (x) Corporation. (x) makes available to its members (certain categories of military personnel) a program of services which includes the arranging of revolving bank credit lines, a shopping by mail catalog service, a travel program and a life insurance program. The plan involves a membership fee of $10. A membership application will include an application on the part of the proposed member for a line of credit directly with the (bank) which shall have discretion to grant or deny the application. A finance charge calculated by the application of periodic rates will be applied to any amounts drawn down on the lines of credit granted by the bank. A stated percentage of the finance charge actually collected will be paid by the bank to (x) for its services in soliciting and screening members, verifying credit information, and assisting in certain collection functions. Since, as you indicate, (x) appears to "arrange for the extension of credit" as defined in § 226.2(f) so as to become a "creditor" under § 226.2(m), in the staff's opinion, both the bank and (x) would be responsible pursuant to § 226.6(d)) for the required disclosures. They could, of course, join in making those disclosures and it would simply be necessary for both parties to be identified on the disclosure statements.

With respect to your second question concerning the $10 annual membership fee, from the facts presented in your letter it appears that the fee is yimply for membership in the total plan which invludes other services in addition to participation in the revolving credit plan. The fee is not necessarily related to any particular extension of consumer credit, and, in fact, the member may never use the revolving credit line. On August 12, 1971, the Board issued a formal interpretation of Regulation Z (§ 226.407—Charges for Membership in Open End Credit Plans) which described the general type of fee to which you refer. It concluded that "since such fees are imposed as a qualification of membership in the plan and for the issuance of a credit card, and not as incident to or as a condition of any specific extension of credit, they do not fall within the definition of a "finance charge" under § 226.4(a) of Regulation Z." We believe that the principle upon which this interpretation was based would also exclude the (x) membership fee from the finance charge.

With respect to your third question, we do not believe that the portion of the finance charge which the bank will pay to (x) must be shown separately from the amount retained by the bank under the terms of § 226.7(b)(4) which requires certain specified portions of the finance charge to be "itemized and identified." The intent of that section is to require the creditor to separate that portion of the finance charge which is the product of the application of the finance charge such as minimum, fixed, check service, transaction or other separate charges.

Excerpts from FRB Letter of April 28, 1972, No. 597, by Frederic Solomon, Director.

NUMBER 52

*** question whether it is permissible for a creditor to charge a minimum finance charge of 50¢ and not disclose an annual percentage rate.

Section 226.5(a)(3) of Regulation Z addresses itself specifically to the determination and disclosure of annual percentage rates where minimum finance charges are involved. Where the total finance charge imposed exceeds 50¢ and includes a minimum charge,§ 226.5(a)(3)(i) provides that the annual percentage rate to be disclosed shall be determined by dividing the total amount of the finance charge for the billing cycle by the amount of the balance to which the finance charge is applicable and multiplying the quotient by the number of billing cycles in a year. However, where the total finance charge including the minimum charge does not exceed 50¢, a creditor should disclose an annual percentage rate computed by multiplying the periodic rate by the number of periods in a year. (See § 226.5(a)(3)(ii)). In either case, however, where a finance charge is imposed, an annual percentage rate must be disclosed on the periodic billing statements provided to the customer.

Excerpts from FRB Letter of May 25, 1972, No. 604, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 53

This is in response to your question with respect to the disclosure of annual percentage rates on open end credit accounts under Regulation Z. Specifically, you question whether the Regulation permits the disclosure of an annual percentage rate of 18%, when the monthly periodic rate of 1½% is applied to the previous unpaid balance which includes previously unpaid finance charges, as well as the original principal balance.

Regulation Z does not preclude a creditor from assessing a finance charge on a previously unpaid finance charge under an open end account plan. The annual percentage rate to be disclosed would be the same whether or not the balance on which the finance charge is computed includes previously unpaid finance charges. We understand, however, that some State laws prohibit the imposition of new finance charges on previously unpaid finance charges.

Excerpts from FRB Letter of June 22, 1972, No. 616, by Jerauld C. Kluckman, Accountant—Analyst.

NUMBER 54

This is (on) whether certain alternatives in computing the minimum payment due may remove a credit plan, which otherwise meets the definition of "open end credit" in § 226.2(r) of Regulation Z, from that category.

Under one alternative, the minimum payment is the greater of a percentage of the outstanding balance or a specific dollar amount. Under the second alternative, the minimum payment is a fixed dollar amount regardless of the outstanding balance of the account. Under the third alternative, the minimum payment is based on a fixed dollar amount to which is added any finance charges imposed on the account during the billing cycle. For example, if a finance charge of $4.50 is imposed during the billing cycle, and $50 is the fixed element of the minimum payment, the minimum payment due for that billing cycle would be $54.50. We understand that the various alternatives are proposed to be used by the different banks that are members of your association.

Under § 226.2(r) of Regulation Z, open end credit is defined to include plans which provide that the customer has the privilege of paying the balance in full or installments. The definition does not prescribe the method by which the installments must be determined. Consequently, it is staff's opinion that these alternative methods of computing the minimum periodic payment would not disturb a credit plan's designation as "open end credit."

As (to) the requirements of § 226.7(a)(8) relating to "the minimum payment required." It is staff's opinion that this provision does not require that specific dollar amounts of payments be shown. We believe that this requirement can be met by disclosing the method by which the periodic payments would be determined.

We note that you propose to show the amount of the average daily balance under the alternative plan as the "range of balances" when there is a single periodic rate. The range of balance disclosure was intended to show the break point where there was more than one rate applicable to the account. (See § 127 of the Act.) In our view the range of balance disclosure is not "applicable" to a single rate account and is therefore not required under either § 226.7(a) or § 226.7(b). Moreover, even if it were applicable, any requirement of its disclosure would be satisfied by an indication that the periodic rate was simply applicable to the account balance—the range implicitly would be the entire range of balances under the account.

Excerpts from FRB Letter of December 15, 1972, No. 651, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 55

(This is on) whether the disclosure of finance charges on *** statement is in compliance with Regulation Z. The Master Charge statement provides separate accounting for purchase and cash advance portions of the account and also provides combined totals for purchases and advances, but does not show a total finance charge figure including both the products of the periodic rates and the per item charge on cash advances. The question is whether such a total is required. The disclosure in question is made as follows:

	FINANCE CHARGE	
	At periodic rate	Per Item
Purchases		
Advances		
Total		

The "per item" column includes transaction charges for cash advances at the rate of 25¢ per cash advance.

It is staff's opinion that the disclosure of the finance charges under the method outlined meets the provisions of § 226.7(b)(4) of Regulation Z. Under that section each element of the finance charge must be itemized and identified. There is no requirement under open end credit that these various elements must be added together and a total of the finance charges disclosed, as there is for credit other than open end. (See § 226.8(c)(8)(i) and § 226.8(d)(3)).

Excerpts from FRB Letter of January 30, 1973, No. 666, by Griffith J. Garwood, Chief, Truth in Lending Section.

NUMBER 56

As we understand the Plan, the customer enters into an agreement with the bank under which a definite line of credit is made available to the customer, subject to the requirement, among others, that the customer obtain specific prior approval from the bank for each advance under the line. If the bank approves a requested advance, the funds may be credited to the customer's checking account or may, as required, be distributed in connection with the purchase of property. The bank may acquire a security interest in property and, as a result, there may be certain fees, charges, and insurance premiums which may be part of the advance. The unpaid balance under the Plan is subject to finance charges computed thereon from time to time, and the customer is required to make periodic payments of a specified amount or a percentage of the unpaid balance, whichever is greater.

In practice, the *** Line is sometimes used to finance the purchase of a large item or items, for insurance, a boat, automobile, airplane or property improvement. Therefore, in some cases, the line will only be utilized in connection with the purchase of a single large item, although the agreement does not limit availability of the line for use in financing any one such purchase and, in fact, additional advances under such lines may be approved. In practice, the customer will be advised that he may from time to time, subject to the bank's approval, add the cost of maintenance, repairs, and/or new equipment or accessories for the item originally purchased to the balance on the line. In addition, as payments are made and the outstanding indebtedness under the line is reduced in relation to the value of the collateral, additional advances under the line may be permitted without the taking of new collateral.

The questions raised are whether the Plan constitutes open end credit for the purposes of Regulation Z disclosures and, if so, how certain fees and charges should be handled. ***

(T)he fact that the bank reserves the right to approve each advance under a line of credit would not, in itself, preclude such a Plan from being treated as open end credit under the Regulation. Furthermore, it is our view that the fact that the Plan may be used for the financing of "big ticket" items would not, in itself, preclude treatment of the Plan under the open end credit provisions. However, in this connection, close attention should be given to interpretation § 226.203 which deals with an analogous situation. The interpretation draws a distinction between open end plans and other plans, and states that "under an open end credit account plan, it *is* contemplated that there will or may be repetitive transactions on a revolving basis." That interpretation was necessitated because of the appearance of plans which met the second and third requirements for open end credit, as defined in § 226.2(r), but failed to meet the first requirement. These plans were not open end credit because the creditor did not, in fact, extend credit on an *account* pursuant to a plan, nor did the plan provide for the creditor to permit the customer to make purchases or obtain loans from time to time. In other words, open end credit disclosure may not be used simply because finance charges are computed from time to time on an unpaid balance and the customer has the right to pay the balance in full or in installments. Creditors using open end disclosures should be prepared to support the Plan's qualification under the open end credit definition in Regulation Z, in the light of interpretation § 226.203. From the facts presented to us and outlined above, it appears that the Suspended Balance Plus Plan could meet the tests of § 226.203 so that open end credit disclosures would be appropriate. This would, of course, entail the use of periodic billing statements under § 226.7(b).

Assuming that the Plan involves open end credit, you inquire how the disclosure of certain fees, some of which are part of the finance charge and some of which are not, should be handled. These would include department of motor vehicle fees, sales tax, marine survey or appraisal fees (in the case of lines to finance boat or automobile purchases), appraisal and recording fees, title policy and lot book report, charges (on lines to finance home improvements), and sales tax, FAA recording fees, appraisal and title search fees (on lines to finance the purchase of an airplane). It is your intention to fully disclose all applicable fees and charges prior to any specific advance.

With respect to the fees which must be included in the finance charge under § 226.4—*e.g.*, appraisal fees on automobiles or airplines— the provisions of § 226.7(a)(3) and § 226.7(b)(4) apply. Such finance charges which are not a product of the application of a periodic rate to the unpaid balance would need to be disclosed on the periodic billing statement and separately identified. Furthermore, the annual percentage rate would need to be determined, prior to June 1, 1973, in accordance with § 226.7(b)(6) and interpretation § 226.704 and, thereafter, in accordance with § 226.5(a)(3) as amended. We note that the description of the method of computing the finance charge and the annual percentage rate on your proposed initial disclosure statement relates only to the assessment of finance charges on the basis of periodic rates and this would need to be expanded. The foregoing discussion, of course, assumes that the charges which are considered to be finance charges will be paid by the customer, and not by the bank. In the event such charges are absorbed by the bank, they need not be itemized and disclosed.

You indicate that you will itemize and disclose, at the time of approval of each advance, the items specified in § 226.4(b) and § 226.4(e) which are not part of the finance charge. These items should also be disclosed pursuant to § 226.7(a)(6). While § 226.7(b) requires the disclosure of an aggregate balance in the account on the periodic statement, it also requires identification of each extension of credit which, in our opinion, would require separate identification on the first billing statement after the transaction of the various charges which are financed.

With reference to your question about § 226.7(e), we do not feel that it is necessarily relevant, absent a change in the terms of the plan. With regard to your question about how new security interests and additional fees and taxes, which may be involved with additional advances, should be treated, the disclosures made under § 226.7(a) should be sufficiently comprehensive to set forth under subparagraph 6 of all of the kinds of charges that may occur from time to time and the conditions under which they may arise, along with explanations as to how they may be determined. Likewise, extensive detail under subparagraph seven may be advisable. Unlike the provisions applicable to closed end credit, identification of the property is not required under § 226.7(a)(7). Wording to the effect that the advance will be accrued by a security agreement or financing statement for any automobile, boat, or airplane or other property financed under the Plan may be adequate to meet the requirements of § 226.7(a), so that no further disclosure with regard to the security interest would need to be made under § 226.7(c). The purpose of comprehensive § 2267.7(a) disclosures would be to provide the customer with sufficiently complete information so that when a certain charge or security interest occurs, it does not constitute a change in terms *in the Plan* subject to the requirements of § 226.7(e).

With reference to your question about the treatment of property insurance which is financed, in our opinion, disclosures as appropriate under § 226.4(a)(6) should be made and it should be handled like the financing of the other fees which are not part of the finance charge, as outlined above.

Excerpts from FRB Letter of February 22, 1973, No. 673, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 57

This is (on) the application of Regulation Z to the combined checking account and credit account statements ("Ready Reference" and "Customer's Statement").

Where there is a good deal of activity in the various accounts, the joint statement may consist of several pages (in addition to the accompanying canceled checks and sales slips). A "Credit Line Summary," which you indicate contains all the disclosures required to be made "on the face of the periodic state ment" under § 226.7(b) and § 226.7(c) will appear on a single page—the last page where there are several pages to the combined statement. Other pages in addition to this last page may contain the dates and amounts of individaul extensions of credit (not required to be shown on the face of the statement under § 226.7(c)), depending upon the activity in the account. You question whether this is in compliance with the Regulation.

In the staff's view, the page which contains the "Credit Line Summary" with the disclosures requred by § 226.7(b) is the "periodic statement" for purposes of compliance with § 226.7(c), so that when all disclosures required to be made "on the face of the periodic statement" are made on the face of this single page, the creditor will have complied with the Regulation. It should be noted, however, that when disclosures not required to be made on the face of the statement are made elsewhere, the "Credit Line Summary" should carry the appropriate "NOTICE" specified in § 226.7(c)(3).

Excerpts from FRB Letter of May 17, 1973, No. 685, by Griffith L. Garwood, Adviser.

NUMBER 58

This is (on) a question with regard to the disclosures required by Regulation Z for optional credit disability insurance under an open end credit plan.

Section 226.4(a)(5) requires, in part, that the creditor provide a disclosure of "the cost of such insurance." Because of the way open end credit operates, it is usually not feasible to provide in advance a disclosure under § 226.4(a)(5) of the total cost of the insurance for the period that credit will be outstanding. In such cases, staff believes that the "cost" provisions of § 226.4(a)(5) are satisfied by making the disclosures necessary to enable a consumer to fully understand the computation of the premium amounts appearing on the periodic statements.

While the shortened form of your proposed disclosure is advantageous in that it is relatively simple, staff does not believe that it would enable the consumer to fully understand the computation of the premiums. Consequently, the longer disclosure, while more complicated, seems to be desirable. In view of the complications, you may assist consumer understanding by placing the insurance disclosures on a statement separate from either § 226.7(a) or § 226.7(b) disclosures. Also, because of the complicated nature, we believe that one or more examples of computation would be helpful, as you have indicated.

Excerpts from FRB Letter of October 3, 1973, by Griffith L. Garwood, Adviser.

NUMBER 59

I am responding to your letter of November 15, 1973, raising questions whether open end or other than open end disclosures should be made under Regulation Z with respect to the following specific situations:

I. (i) An amount is opened for a customer at the store. The contract indicates that future purchases may be made from time to time, the customer has the privilege of paying the balance in full or in installments, and a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. After one purchase, the contract is assigned to a financing institution. The store continues to give periodic statements and the customer may make new purchases on the old contract. Does the sole fact that the contract has been assigned transform this transaction from an open end to an other than open end?

Answer: It is staff's opinion that the fact that the contract has been assigned would not transform the transaction from an open end account to credit other than open end for Regulation Z purposes.

(ii) The original contract is assigned to a financing institution. The store continues to send out the periodic statements, but now will not permit the customer to make additional purchases on the original contract. Does the fact that the assignment now prohibits additional purchases indicate that what appeared to be an open-end contract was in fact a closed-end contract thus requiring disclosures under § 226.8 of Reg. Z rather than § 226.7?

Answer: The intent of the parties at consummation of the transaction may be determinative of whether § 226.7 or § 226.8 disclosures should be made. If the creditor intends that only a single purchase may be made on the account with no privileges to make additional purchases, it is staff's view that § 226.8 disclosures should be made. On the other hand, if it is intended that additional purchases can be made, but the subsequent assignment of the contract would prohibit such additional purchases, it appears that § 226.7 disclosures would have been appropriate.

(iii) In this situation the contract is assigned and the financing institution now sends out the periodic statements. The customer may make additional purchases on the original contract at the store. Again, which disclosures are required to be made at the time the original contract is entered into?

Answer: It is staff's view that open end credit disclosures would be appropriate.

(iv) The contract is assigned, the finance company sends out the periodic statements and the customer may not make additional purchases on the assigned contract. Should open-end or closed-end disclosures be given?

Answer: The response given above under question (ii) seems appropriate in this case also.

II. A regular open-end account is opened for a customer at a furniture store. The contract provides that future purchases may be made from time to time, the customer has the right of paying the balance in full or in installments, and a finance charge may be charged from time to time on the unpaid balance. The average sale at the furniture store is $450.00

(a) The customer is not told that the furniture store has a credit limit of $600.00 on the open-end account which is strictly enforced;

(b) The customer is told orally and on the open-end agreement that a credit limit of $600.00 is established for him, and additional purchases cannot be made.

What is the effect of a credit limit, its non-disclosure and its relationship to average sale on disclosure requirements?

Answer: The credit limit is not a term that must be disclosed to the customer under Truth in Lending. Consequently, the existence of a credit limit is not determinative of whether credit may be open end or other than open end, although it is common in open end transactions. It would appear that under (a) open end disclosures would be appropriate. However, under (b) where additional purchases cannot be made, epen end disclosures would seem inappropriate inasmuch as the terms of the agreement prohibiting additional purchases do not meet the definition of open end credit as provided in § 226.2(r).

Excerpts from FRB Letter of April 5, 1974, No. 776, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 60

I am writing in response to your letter of ***, 1974, in which you asked for this staff's opinion on the appropriate disclosure of credit life insurance in an open credit plan. Specifically, you indicate that the creditor in question purchases group credit life insurance covering all of its consumer debtors between the ages of eighteen and sixty-five and that the premium for this insurance comes from income generated by the finance charge and is absorbed by the bank at the cost of doing business. There is no separate charge to the borrower for the insurance. You further indicate that the bank specifically discloses to its customers that credit life insurance is required of all individuals within the specific age bracket and that the cost of such insurance is included in the finance charge. You question whether there need be any separate itemized computations of the charge for credit life under this arrangement.

It is Staff's view that no separate charge for credit life insurance need be disclosed within the factual context you have presented. In support of this position we are enclosing a copy of the staff's opinion letter of May 19, 1969, and also wish to direct your attention to Public Information Letter 167 dated October 21, 1969.

Excerpts from FRB Letter of February 11, 1975, No. 870, by D. Edwin Schmelzer, Attorney, Fair Credit Practices Section.

NUMBER 61

This is in response to your letter *** with respect to questions regarding the disclosure of payments and credits under § 226.7(b)(3) of Regulation Z. Specifically, you posed the following questions; our responses immediately follow those questions.

1. May we identify each payment as such, and each credit as such, each individually, and then have the total of all payments and credits combined and disclosed in a joint payments/credits box?

Staff believes it is permissible under Regulation Z to identify each payment and each credit as such and to have a total of all payments and credits combined and disclosed in a joint payments/credits box.

2. Is there a Board purpose to be served by separate identification of each credit as "credits" and each payment as "payments," or in the interest of meaningful disclosure, may we identify each credit as "credit" and each payment as "payment?"

It is staff's view that it would be permissible to identify each payment as "payment" and each credit as "credit" as opposed to "payments" and "credits." While the technical language of the regulation would seem to require the terms "payments" and "credits," staff believes that such terms are perhaps more appropriate for column headings as opposed to line entries.

3. Is it permissible to identify payments separately and credits separately in the transaction description portion of the billing statement?

Staff believes it would be permissible to identify payments separately and credits separately in the portion of the billing statement in which transactions are described.

Excerpts from FRB Letter of May 19, 1975, No. 894, by Jerauld C. Kluckman, Chief, Fair Credit Practices Section.

NUMBER 62

This is in response to your letter *** requesting a staff opinion on whether certain deletions may be made from the Fair Credit Billing disclosure notices of Regulation Z §§ 226.7(a)(9) and 226.7(d)(5). Specifically, you have asked whether the disclosures concerning the customer's right to assert defenses against the card issuer when he is unable to obtain satisfaction from the merchant as provided in § 170 of the Act and § 226.13(i) of the regulation may be deleted from disclosure statements sent by two-party creditors.

Staff is of the opinion that the regulation permits creditors to delete from the disclosure statements of §§ 226.7(a)(9) and 226.7(d)(5) any statements which are not applicable to their particular credit plans. With regard to your specific question, staff's opinion is that all creditors must make disclosure of the rights granted under § 170 since the customer has those rights regardless of whether the credit plan is two-party or three-party. However, the portion of the disclosure of § 170 rights which outlines the limitations on these rights may be deleted in the case of two-party credit plans since these limitations are not applicable to these plans and their disclosure can ony confuse customers.

The foregoing means that two-party creditors must make at least the following disclosure of § 170 rights as provided in §§ 226.7(a)(9) and 226.7(d)(5):

> If you have a problem with property or services purchased with a credit card, you may have the right not to pay the remaining amount due on them if you first try in good faith to return them or give the merchant a chance to correct the problem.

In the § 226.7(a)(9) disclosure statement, all the text following the above statement may be deleted. In the § 226.7(d)(5) disclosure statement, all the text following this statement except the last paragraph may be deleted.

Excerpts from FRB Letter of October 14, 1975, No. 926, by Jerauld C. Kluckman, Chief, Fair Credit Practices Section.

NUMBER 63

This is in response to your letter *** in which you asked whether it is permissible to comply with the disclosure requirements of § 226.7(i) of Regulation Z by sending all of the disclosures required by § 226.7(a) to all of your customers rather than by sending only those disclosures "not previously required to be disclosed to the customer."

So long as this is done in such a way as to comply with the requirement that the disclosure be made to all customers who have a balance of more than $1 at or after the closing date of the first full billing cycle after October 28, 1975, not later than the time of mailing or delivery of the periodic statement for that billing cycle, staff believes the plan you outline is permissible under the regulation.

Excerpts from FRB Letter of October 16, 1975, No. 927, by Glenn E. Loney, Attorney, Fair Credit Practices Section.

NUMBER 64

This is in reponse to your letter ***. According to the letter, your retail store client is terminating use of its open end credit plan, and will limit future credit sales to other than open end transactions. You ask whether there is any requirement in Regulation Z that your client notify existing open end credit customers that all future credit sales will be other than open end. You state that the terms of the open end contract as initially disclosed to the customer provide generally that your client can limit future purchases and terminate the customer's right to make additional purchases without affecting existing obligations to your client.

Staff is of the opinion that there is no obligation in Regulation Z for the creditor to notify customers of this changed policy.

Excerpts from FRB Letter of October 21, 1975, No. 930, by D. Edwin Schmelzer, Chief Attorney, Fair Credit Practices Section.

NUMBER 65

This is in response to your letter of December 2, regarding the applicability of § 226.7(j) of Regulation Z to the "cash advance by mail program" which you offer to your cardholders.

You ask whether the cash advance by mail form constitutes a blank check, payee designated check, blank draft or order, or other similar credit device subject to the requirements of § 226.7(j). It is staff's understanding that these request forms are sent irregularly and without request to customers as a marketing device to stimulate account activity. An examination of the form provided indicates that the cashier's check sent by the bank in response to a customer request could be directly sent to the designated payee rather than to the customer. Therefore, if the section were read to require sending the disclosures with the check, it is quite likely that in many cases the customer would not receive the disclosures. Therefore, in staff's view, the request for cash advance by mail form is a supplemental credit device covered by § 226.7(j) and, thus, the relevant disclosures must be made in conjunction with it.

You ask whether, assuming that the cash advance by mail form is covered by § 226.7(j), the disclosures made on the reverse side of the periodic statement which accompanies the form would suffice in meeting the re uirements of § 226.7(j). As an initial matter, staff does not view § 226.7(j) as prohibiting making disclosures on the reverse side of the accompanying periodic statement provided the disclosures are clear, conspicuous, and properly referenced on the credit device. It would seem that for the most part the disclosures made on the reverse of your periodic statement are disclosures required by § 226.7(b), whereas § 226.7(j) calls for disclosures required under § 226.7(a)(1), (2), (3), and (4).

You ask, if your disclosures are not in compliance, whether there is any way that they may be perfected. Section 226.7(j) provides that a creditor may comply with its terms by making a full disclosure of § 226.7(a), provided that the four disclosures specified are clearly and conspicuously referenced on or accompanying that disclosure statement. Thus, the normal initial account disclosures, properly referenced, could assure compliance.

With regard to the form you submitted, I will make two specific comments. As mentioned before, the pertinent sections' disclosure must be highlighted or referenced if they are made in conjunction with other disclosures. I would like to point out that the minimum payment schedule is not one of the specified disclosures, and, thus, its appearance on your disclosure form would trigger your obligation to highlight the disclosures which are specified in § 226.7(j). Further, with regard to your disclosure of when finance charges begin to accrue in cash advance and check reserve advance situations, the "date processed" is stated as the beginning date. It is not clear whether that date is the date the cashier's check is prepared and sent or whether it is the date it is negotiated for clearance through the bank or some other date.

Excerpts from FRB Letter of December 18, 1975, No. 977, by Glenn E. Loney, Attorney, Fair Credit Practices Section.

NUMBER 66

This is in response to your letter *** concerning the recently adopted Fair Credit Billing amendments to Regulation Z ***.

Your second question concerns creditor refunds of excess payments under § 226.7(h)(3). That section provides that a creditor may refund any excess payment of any amount, after crediting a customer's account with the total amount of a payment, whether or not a refund is requested by a customer. You state that the subsection makes no reference to the sum of $1 as does the preceding subsection, but that some reviewers seem to be of the opinion that the creditor would be safe in refunding amounts in excess of $1 and retaining any lesser excess payments.

In staff's view, this section does not allow a creditor to retain any excess payment under $1. Section 226.7(h) merely states that a customer has a right to request and receive a refund of his entire excess payment whenever he makes an excess payment of $1 or more. It was not meant to imply thereby that the creditor may keep any excess payment of less than $1. Section 226.7(H)(1) provides that the creditor must credit or refund *any* excess payment, whether it is more or less than $1, upon receipt.

Section 226.7(h)(3) was intended to clear up any question that a creditor may have above his right to provide a refund to the customer at any time after crediting the entire amount of a payment to the customer's account under § 226.7(h)(1)(i) and thereby discharge his obligation to send periodic statements under § 226.7(b)(1) to customers with credit balances in excess of $1. Many creditors felt that earlier drafts of the Regulation required them to continue sending periodic statements but did not leave them the option of sending a refund and discontinuing sending periodic statements.

We wish to assure you that the Board took into account your concerns regarding the costs and burdens of the regulations upon creditors when it adopted these amendments to Regulation Z. It was the Board's intention to provide regulations which impacted upon the creditors in the least costly and burdensome manner while providing the essential protection envisioned by Congress when enacting the statute which required these amendments.

Excerpts from FRB Letter of Feb. 10, 1976, No. 1003, by Jerauld C. Kluckman, Assistant Director.

NUMBER 67

This is in reply to your letter *** concerning questions you have about the recent amendments to Regulation Z, implementing the Fair Credit Billing Act, and concerning Regulation B, which implements the Equal Credit Opportunity Act. You ask several questions and, to the extent possible, I will answer them in the order in which they were presented.

1. On your periodic statement there is a column headed "Payments Credits." There is also a column with the heading "Code." At the bottom of the periodic statement is a listing of the code symbols by which an item which appears in one of the other columns is described in the "Code" column. For example, if a payment appears in the "Payments Credits" column, the code symbol "Paym" appears on the same line in the "Code" column and the customer is told by referring to the listing at the bottom of the periodic statement that this indicates a payment received. However, as staff understands your periodic statement form, there is no similar code symbol for other credits which may appear in the "Payments Credits" column. Your question is whether this is sufficient under § 226.7(b)(1)(iii) of Regulation Z or whether separate columns for payments and credits must be provided or, alternatively, whether each credit must be separately identified as such in the "Code" column.

In staff's view, it is permissible under the regulation to have payments and credits in the same column with each identified as either a payment or a credit or to provide separate columns, one for payments and one for credits. The system which you use currently identifies the payments but leaves the credits unidentified except by a process of elimination. That is, any figure which appears in the "Payments Credits" column which is not otherwise identified would have to be presumed to be a credit by the customer. In staff's view, this is not a sufficient disclosure. However, we believe that compliance with the regulation could be achieved by an abbreviated code reference to credits.

2. On your periodic statement you state that there is a provision which says "Please make minimum payment of $..... within 10 days after above closing date of billing cycle to avoid additional charges." You state that you have changed the reference to read "14 days" but had not done so on the periodic statements mailed on November 10, 1975, your statement mailing date (which coincided with the closing date of your billing cycle). You ask whether this was improper under § 226.7(b)(2) and, if so, what your bank should do in order to comply.

To begin, I should point out that not only § 226.7(b)(2) but, also, § 226.7(b)(1)(ix) has an impact upon your practice in this regard. Section 226.7(b)(2) requires that the periodic statement be mailed or delivered at least 14 days prior to the date specified in the statement as being the date by which payment of the new balance must be made in order to avoid the imposition of an additional finance or other charge. This section, of course, applies only in those cases in which such a date exists. Failure of the creditor to comply with this provision results in the creditor's forfeiture of finance charges for that billing cycle. Evidently, your bank does contemplate such a date because it does provide that the customer may pay the minimum payment within 10 days (to be changed to 14 days) to avoid additional charges.

Section 226.7(b)(1)(ix) provides that the date by which or the period within which, if any, payments must be made to avoid additional finance charges must be disclosed. Obviously, this date must be at least 14 days after the periodic statements are mailed in order to comply with § 226.7(b)(2). Therefore, in staff's view, the disclosure of the 10-day period in November apparently was not in compliance.

3. You ask whether, if your periodic statement contains only one address, the provisions of § 226.6(k)(2) would require you to change your periodic statement to comply with § 226.7(b)(1)(ix).

Section 226.7(b)(1)(x) requires that an address preceded by the caption "Send Inquiries To:" or similar language be supplied on each periodic statement. Section 226.6(k)(2) provides that if there is more than one address listed on a periodic statement, then any billing inquiry received at either of those addresses would have to be treated as a proper written notification of a billing error, assuming all other elements of a proper written notification are present, unless one of the addresses was preceded by the caption or other similar language. Section 226.6(k)(2) further provides that a periodic statement will be deemed to be in compliance without a caption as provided in § 226.7(b)(1)(x) until April 30, 1976, if it has only one address listed. Any notifications of billing errors received at that address must, of course, be treated as a proper written notification of a billing error. After April 30, 1976, at least one address on the periodic statement must contain the prescribed caption or similar language. Section 226.6(k)(2) was designed as a transition period to allow creditors to design and print complying forms without depriving customers the facility through which to raise inquiries.

4. You state that an affiliate corporation of your bank, a consumer finance company, is considering establishing revolving credit loan accounts in connection with which they would pay out funds by issuing their check payable to their customer. You ask whether such a check comes under the definition of "supplemental credit devices" or "payee designated check" for purposes of § 226.7(j).

As staff understands the situation, the checks in question are simply the finance company's method of providing funds under a requested loan. These checks are payable to the customer and could be used by him in whatever manner he chooses. Presumably, at the time of opening the account or at the time of application for the loan the relevant Truth in Lending disclosures were made. Under this characterization of the situation, it is staff's view that the check which is issued to the customer is not a "supplemental credit device" or "payee designated check" as contemplated by § 226.7(j).

5. You state that you have some concern with the instructional wording at the beginning of Appendix C on page 91 of the Truth in Lending pamphlet of October 28, 1975. Your concern is that the wording appears to require compliance with the "more conspicuous" requirements and the numeral type size requirements of § 226.6(a). Further, you indicate that the statements for purposes of § § 226.7(a)(9) and 226.7(d)(5), set out in Appendix C do not comply with § 226.6(a) and that you are therefore unsure whether the apparent requirement that § 226.6(a) be followed is in fact the right inference to draw from that language.

In staff's view, the requirement that the term "finance charge" be more conspicuously disclosed in those cases where it is a required term under the regulation does not apply to this statement. The requirement in § 226.6(a) was directed at those cases, such as § 226.7(b)(1)(iv), where the term "finance charge," as such, is required. It is staff's belief that the numeral type size requirements of § 226.6(a) are, in fact, met by the statement as set out in Appendix C and should be met in any such statements which are prepared by creditors. To add to this discussion, I am enclosing two earlier staff opinion letters outlining when the "more conspicuous" requirement of § 226.6(a) must be met.

You also inquired as to the meaning of the term "Other" which appears as Item 6 of the sample Statement of Reasons for Denial of Termination of Credit which appears in § 202.5(m) of Regulation B. The term "Other" means the creditor must designate any other reason for denial or termination of credit which does not already appear on the sample form. This includes, but is not limited to, giving the name of a particular creditor who gave information causing the denial or termination of credit, so long as it complies with the Fair Credit Reporting Act.

Discussions with staff of the Federal Trade Commission's Bureau of Protection, which has enforcement responsibility with respect to the Fair Credit Reporting Act, indicate it would be acceptable to consider the requirements of § 202.5(m) and the Fair Credit Reporting Act completely separate. Alternatively, one could incorporate the reasons for denial statement required under § 202.5(m) of Regulation B with the disclosures required by the Fair Credit Reporting Act for all applicants who are denied or terminated credit.

Excerpts from FRB Letter of January 20, 1976, No. 994, by Jerauld C. Kluckman, Assistant Director.

NUMBER 68

This is in response to your letter of *** concerning the requirement in § 226.7(b)(1)(i) and (ix) of Regulation Z that credit balances be designated by an appropriate identification on the periodic statement. Your question was whether an identification such as "credit," "C," "CR," "CB," or a minus sign before or after the amount is appropriate. Additionally, you asked whether the method of identifying credit balances on a periodic statement and the stub to be returned with payment as outlined on the exhibits you included is sufficient to comply with the regulation.

In staff's view, any of the designations listed above would be appropriate identification of credit balances as required in the regulation. However, where the symbols such as "C," "CR," "CB," or a minus sign are used, staff believes that some method should be employed to further explain what the symbols mean. Thus, a legend or some description that the "C" equals a credit or credit balance would be appropriate. Where the word "credit" or the phrase "credit balance" is used, staff believes that such identification would be sufficient in itself.

Your second question was whether the method you outlined on the enclosed exhibits would be sufficient to comply with the requirement that credit balances be appropriately identified. On the exhibits you provided, the credit balance amount is indicated on the periodic statement and is designated with the letter "C." On the payment stub, the phrase "credit balance statement" appears when the statement contains a credit balance and the customer need make no payment. In staff's view such an approach would be an appropriate way of indicating to the customer that the account contains a credit balance and would be an appropriate identification of the credit balance as required in § 226.7(b)(1)(i) and (ix). Regarding your second exhibit, in which the customer is required to make payment but there was a credit balance existing because the previous balance was a credit balance, the designation "C" without some identification that the "C" is a credit balance would not, in staff's view, be sufficient to identify the credit balance as required by § 226.7(b)(1)(i). Thus, in staff's view it would be necessary to designate or explain that the "C" equals a credit or credit balance on the material provided the customer.

Excerpts from FRB Letter of April 15, 1976, No. 1027, by Jerauld C. Kluckman, Assistant Director.

NUMBER 69

This is in response to your letter concerning certain sections of Regulation Z implementing the Fair Credit Billing Act. Each of the four problem areas you have outlined will be summarized and answered in turn.

1. Disclosure of posting date. Your first concern is with an alleged inconsistency created between the disclosure requirements of § 226.7(b)(1)(ii) of Regulation Z, the definition of billing error in § 226.2(j)(1), and erroneous billing in § 226.14(b)(2). The definition of billing error and the examples of an erroneous billing include a reflection on a periodic statement of an incorrect date or date other than the transaction date as part of the description of the transaction. Section 226.7(b)(1)(ii) provides, on the other hand, that in certain circumstances disclosure of a date other than the date of the transaction is permissible. The question is what consideration must be given by a creditor of a proper written notification of a billing error alleging that the date of the transaction is not correct when the creditor is using one of the permitted alternatives.

It is staff's opinion that where a customer raises a billing error alleging the date is incorrect, the creditor must comply with the error resolution procedure, but an erroneous billing would not result so long as the date disclosed is one permitted under the regulation. If, however, the date disclosed is one that does not comply with the regulation, the result would be considered an erroneous billing, and the creditor would be required to comply with § 226.14(b) accordingly.

2. Reliance on information provided by sellers. Regulation Z provides in § 226.7(b)(1)(ii)(E)(1) that, when the creditor and the sellor are not the same or related persons, the creditor may rely upon and disclose the date and amount of the transaction supplied by the seller. The question you asked was why the creditor may not similarly rely on the name and address of the seller. A major consideration in permitting the creditor to rely on the date and amount supplied by the merchant was to avoid the necessity for the creditor to verify the amount and date each time they are disclosed on a periodic statement.

It is staff's belief that the disclosure of the name and address of the seller does not contain the same potential for numerical error and need for verification. The accurate name and address of the seller should be an item of information of which the creditor is aware. This is especially so in view of the contractual relationship existing between the seller and creditor and, thus, staff believes that the name and address of the seller should not be subject to the reliance permitted in § 226.7(b)(1)(ii)(E).

3. Location of disclosures. Your first question is in regard to the disclosure of the address to which billing inquiries may be sent preceded by the caption "Send Inquiries To:" required by § 226.7(b)(1)(x). Section 226.7(c)(3) permits that disclosure to be made on the face or reverse side of the periodic statement. You request that such disclosure be permitted on a separate accompanying statement.

Staff believes that this disclosure is of such importance to customers that it would not be permissible to make it separately from the periodic statement. This is so in view of the importance of informing consumers where to direct billing inquiries. Billing inquiries can, of course, be made up to 60 days after the periodic statement on which the error first appeared is mailed. Having that address readily available on the periodic statement which may be retained by the customer should assist a customer in properly exercising the rights granted under the Act.

Your other question relates to the disclosure requirement in § 226.14(b)(4) which permits an indication on the face of the periodic statement that payments of amounts in dispute is not required pending compliance with the error resolution procedure. You ask if this disclosure may be made on the reverse side of the periodic statement.

Staff believes that this disclosure may only appear on the face of the periodic statement. Not having to pay amounts in dispute during the resolution period is one of the more important rights given customers by Fair Credit Billing. The placement of this disclosure adjacent to the amount due is felt to be essential if a customer is to be reasonably assured that payment of disputed amounts is not required.

4. "As of" crediting transition period. You express concern with the language in § 226.7(g)(5) requiring that there be "... a 'previous balance' in the account for the billing cycle in which such payment was received ..." before the customer may utilize the transition provision. The issue is whether the "previous balance" must appear on a periodic statement before a creditor can take advantage of the five-day delay in crediting.

An example may be helpful to illustrate the problem. A $100 purchase is posted to a customer's account on January 15. The account contains no other debit balances at that time. The January billing cycle closes and a periodic statement is mailed on February 1. This periodic billing statement will show a "previous balance" of $100. Immediately after the January cycle is closed (also on February 1), the account will be carried as having a $100 previous balance. Assuming the customer makes a payment of $50 on the 20th day of February, the question then arises whether the account contains a previous balance during the cycle in which the payment was received. You indicate that the requirement that there be a previous balance in the account could be interpreted to require that there be a previous balance shown on the billing statement issued on February 1 (which is the periodic statement reflecting the account activity during the January billing cycle), since payments received in the February cycle are for transactions billed on the February 1 statement. If the regulation is read in that fashion, you indicate that the five-day transitional posting delay would not be available to a creditor for the posting of that $50 payment on February 20, because the statement sent on February 1 contained no previous balance.

It was not the intent of the Board to require that the previous balance appear on a periodic statement in order for the transition provided in § 226.7(g)(5) to be available to creditors. There is no requirement that the previous balance be reflected on a periodic statement before a creditor may take advantage of the five-day transition period. Consequently, any payment made during a billing cycle in which there is a previous balance *in the account*, even though it has not yet appeared on a periodic statement, may be credited up to five days after receipt as provided in § 226.7(g)(5).

Excerpts from FRB Letter of April 19, 1976, No. 1031, by Jerauld C. Kluckman, Assistant Director.

NUMBER 70

This is in response to your letter of *** regarding the "reasonable requirements" for the prompt crediting of payments which may be imposed under § 226.7(g)(2) of Regulation Z. Specifically, you asked whether the paragraph set forth below, specifying time requirements for receipt of payments by mail, is reasonable within the meaning of § 226.7(g)(2).

"Payments, accompanied by the payment stub, received at the address on the face of the enclosed payment envelope by 10 A.M. on any bank business day will be credited as of the date of receipt. Payments received at that location after that time will be credited as of the next business day. Payments made at a branch office of this bank prior to 3 P.M. on any bank business day will be credited as of the date of receipt. Although all other payments may not be credited on the date received, they will be posted promptly within the five day period allowed by Federal law."

You indicated that the exact wording of the above notice would vary from bank to bank depending upon each bank's practices and operational capabilities. Additionally, you stated in our telephone conversation that approximately 90 per cent of the bank's mail is received at the indicated address prior to the 10 a.m. deadline specified in the notice.

In staff's view, based on the facts you have outlined, the disclosure which you propose appears to set reasonable requirements and would comply with § 226.7(g)(2) requiring that a reasonable time and place be specified as that required for payments to be credited as of the date received. Of course, the determination of what is reasonable in any given case will depend in the final analysis on what a court might decide is reasonable, and different facts from those you provided might lead staff to a contrary opinion.

A second point which you raised was whether a bank may establish and disclose a reasonable same-day crediting hour for receipt of payments by mail which is different than for other kinds of payments. In staff's view, it is entirely appropriate to specify a time cut-off which is different for payments made by mail than by any other means. The specific reason § 226.7(g)(2)(i) was inserted in the regulation was to permit specification of a particular hour and a particular location in order to permit creditors to establish procedures whereby payments could be credited as of the date of receipt.

Excerpts from FRB Letter of April 19, 1976, No. 1032, by Dale R. Granchalek, Attorney, Fair Credit Practices Section.

NUMBER 71

This is in reply to your letter of *** regarding the treatment under Regulation Z of certain charges which your bank card using client is considering imposing.

According to your letter, your client will, upon a customer's request, provide copies from microfilm records of the customer's sales tickets when the customer cannot recognize the sale from the description contained on the periodic statement. However, your client intends to charge a customer for this service only in the event that the customer is requesting several months' satement for bookkeeping reconciliation, tax purposes, or in connection with a division of charges between persons on the account. If the customer merely advises that the statement was not received or, we presume, was not understandable, you indicate that your client will furnish one statement wihtout charge.

In staff's view, neither the Fair Credit Billings Act nor Regulation Z specifically prohibits a creditor from imposing a charge for providing information when requested for bookkeeping, tax purposes, and the like. Neither § 226.7 nor § 226.4 would require disclosure of this charge as a finance charge or as an "other charge."

However, such customer requests should be distinguished from those customer requests for a copy of a sales ticket or voucher because the customer did not receive or could not understand the identification of a transaction provided on or with the periodic statement to which the customer is entitled. In the latter situations, staff continues to hold the opinion expressed in Public Information Letter 1008, which was cited in your letter, that any charges imposed for such requests must be reasonable in amount and disclosed as "other charges" pursuant to § 226.7(a)(6).

Excerpts from FRB Letter of April 22, 1976, No. 1035, by Jerauld C. Kluckman, Assistant director.

NUMBER 72

This is in reply to your letter of *** in which you raised questions about the proper treatment of the insurance authorization under § 226.4(a)(5) of Regulation Z for open end credit plans.

The first concern expressed in your letter is whether the disclosures and authorization required by § 226.4(a)(5) may be made on a document other than the disclosure statement containing the § 226.7(a) disclosures. In staff's view, it is permissible to make the § 226.4(a)(5) disclosures for open end credit on a document separate from the § 226.7(a) disclosure statement. Since under your client's credit program the amount and cost of insurance will depend upon the amount of credit extended, the requirement in § 226.4(a)(5) that the cost of the insurance be disclosed would be satisfied by a disclosure of the amount of the insurance premium applicable to a given amount of credit extended (e.g., 24 cents per hundred dollars).

With regard to your second question, in staff's view the insurance premium is an "other charge" under § 226.7(a)(6) and must be disclosed as such. This is true even though the cost of the credit insurance has been disclosed on the separate written authorization pursuant to § 226.4(a)(5).

You ask what additional disclosures the bank would have to make using a separate document for the insurance authorization, assuming the bank were to treat the insurance premium accruing at the end of each billing cycle as a loan advance upon which a finance charge will begin to accrue in the next billing cycle. In staff's view, the reflection on a periodic statement of an amount charged to a customer's account for the insurance premium should be identified in the same manner as any other credit transaction reflected on the account under § 226.7(b)(1)(ii). This, staff believes, is true whether or not a finance charge is imposed upon that amount.

Excerpts from FRB Letter of April 22, 1976, No. 1037, by Glenn E. Loney, Attorney, Fair Credit Practices Section.

NUMBER 73

This is in reply to your letter of *** in which you raised several questions concerning § 226.7(d)(5) of Regulation Z.

First, you asked whether the short form statement prescribed in § 226.7(d)(5) may be printed on a portion of the material accompanying the periodic statement which the customer may not retain. In particular you are concerned that your client wishes to place the short form statement on the reverse side of the payment stub which is attached to the periodic statement. Section 226.7(d)(5) states that such short form statement must be made on or with each periodic statement required by § 226.7(b)(i). In staff's view, such short form statement may appear on the face or reverse side of the payment stub accompanying the periodic statement. There is no requirement that the short from statement be disclosed in a form which the customer may retain.

You have also questioned which of the notices specified in § 226.7(c)(4) should be placed upon the face of the periodic statement if the short form statement is printed on the reverse of the payment stub. The disclosure of a statement specified in § 226.7(c)(4) is required to be made by § 226.7(d)(5) only "if applicable." Since disclosure of the statement will be made on the reverse of the payment stub which will be returned with the payment and not retained by the customer, staff believes that none of the § 226.7(c)(4) disclosures are required to be made in this case. However, the lack of the requirement would not preclude the creditor from printing a helpful notice to the customer, such as a printed indication on the face of the payment stub to see the reverse side for information on Fair Credit Billing rights.

Excerpts from FRB Letter of May 4, 1976, No. 1043, by Jerauld C. Kluckman, Assistant Director.

NUMBER 74

This is in reply to your letter of *** raising questions under § § 226.7(a)(2), 226.7(b)(1)(ii), and Interpretation § 226.703 of Regulation Z.

According to your letter your client provides open end credit to its customers in the form of overdraft checking accounts. In computing the finance charge, your client applies a daily periodic rate to the outstanding balance each day. This results in a daily finance charge which, when totalled at the end of the billing cycle, computes out to the total finance charge for the billing cycle.

Section 226.7(a)(2) requires a creditor to disclose, as an initial matter, the method of determining the balance upon which a finance charge may be imposed. Section 226.7(b)(1)(viii) requires the creditor to disclose on the periodic statement a balance on which the finance charge was, in fact, computed and a statement regarding how that balance is determined. It is your belief that these sections impose identical requirements with reference to disclosure of the method of determining the balance on which the finance charge may be imposed.

Interpretation § 226.703 provides four methods of showing the balance to which a single daily periodic rate is applicable on the periodic statement. One of those methods of disclosure is to show the average daily balance during the billing cycle with the proviso that, if this method is used, the creditor shall state that the average daily balance is or can be multiplied by the number of days in the billing cycle and the daily periodic rate applied to the product to determine the amount of the finance charge.

You ask whether a creditor under Interpretation § 226.703 may disclose on a periodic statement using any of the four alternatives, even though he actually applies a daily rate to an actual daily balance. In staff's view, a creditor may use any of the four alternatives to disclose the balance on which a finance charge is computed since any of the four alternatives compute the finance charge to be the same amount.

Further, you asked whether the creditor may make the same disclosure regarding the method of computing the balance upon which a finance charge may be imposed on the initial disclosure statement under § 226.7(a)(2), or whether he must disclose the method which is actually used to compute the balance upon which a finance charge is imposed and, ultimately, the finance charge itself. In staff's view, § 226.703 is inapplicable to initial open end disclosures under § 226.7(a) because it relates to showing a *balance* upon which a finance charge is imposed. That balance does not exist when the § 226.7(a) disclosures are made. The wording which must be added under alternative (iv) regarding disclosure of the average daily balance in Interpretation § 226.703 should eliminate any confusion which may develop if a creditor discloses that he will apply a daily periodic rate to a daily balance as an initial disclosure matter under § 226.7(a) but then discloses an average daily balance under § 226.7(b)(1)(viii).

The creditor may, of course, disclose both on the initial disclosure and on the periodic statement that he will compute finance charge on average daily basis even though, as an internal matter, he computes it by applyng a daily periodic rate to the actual daily balances, since the computation works out to exactly the same amount.

In light of the above discussion, I believe that an answer to your third question is not necessary. I trust that this has been responsive to your inquiry.

Excerpts from FRB Letter of June 1, 1976, No. 1057, by Glenn E. Loney, Attorney, Fair Credit Practices Section.

NUMBER 75

This is in reply to your letter *** inquiring as to whether the semiannual statement of customers rights under § 226.7(d) of Regulation Z may be mailed or delivered to the customer with the annual renewal of the customer's credit card or in some manner other than by being included on or with the customer's periodic statement for two billing cycles during the year.

Section 226.7(d)(1) does not require that the semiannual statement required to be sent thereunder accompany or be attached to the periodic statement. If the creditor wishes to send the statement required by § 226.7(d)(1) with other material which is being sent by the creditor, including renewal cards, that is permissible under the Regulation. However, the creditor must be certain that the statement mailed under § 226.7(d)(1) is provided to all the customers entitled to receive such statement under Regulation Z and that the timing of the delivery of such statements comply with the requirements set out in § 226.7(d)(2) and (3).

It should be clear that, unlike the statement discussed above, the statement sent under the alternative provided in § 226.7(d)(5) must appear on the periodic statement or accompany it.

Excerpts from FRB Letter of June 2, 1976, No. 1058, by Jerauld C. Kluckman, Assistant Director.

NUMBER 76

This is in reply to your letter *** in which you raise questions regarding credit advertising and descriptive billing under Regulation Z.

The first fact situation that you present raising questions under the advertising provisions of Regulation Z is essentially as follows: Your client's credit card application will be available in merchant establishments as well as in other places. The entire package included with the application consists of a customer agreement, a Truth in Lending initial disclosure notice, and a promotional statement. The Truth in Lending disclosure notice does not include the statement required by § 226.7(a)(9). However, you state that if a customer's application is accepted, the full disclosures under § 226.7(a), including those required by § 226.7(a)(9), will be sent to the customer along with the credit cards.

You ask whether the failure to include the disclosures required by § 226.7(a)(9) with the disclosure notice which accompanies the application violates Regulation Z. Section 226.7(a) requires that all disclosures set forth in that section be made together prior to the first transaction on the credit account. Therefore, since your client provides all the § 226.7(a) disclosures with the credit card if the application is approved, the Regulation's requirements are fulfilled. The fact that incomplete disclosures are made with the application does not violate the Regulation.

Of course, if the disclosure statement which accompanies the application contains, as it apparently does, any of the triggering terms under § 226.10(c) regarding advertising of open end credit, your client should make certain that all the required terms are disclosed therein. The statement required by § 226.7(a)(9) is not a required term under § 226.10(c), and its omission from the disclosure provided with the application does not, in itself, constitute a violation of § 226.10(c).

Your second question relates to the method of disclosing the seller's address for purchases of tickets and other items from AMTRAK. You state that travel agencies and terminals that will accept your client's credit card are nationwide and in Canada. You further state that all AMTRAK tickets are processed in Washington, D.C., and that you would prefer to list Washington, D.C., as the address of the seller in all cases since as a practical matter it will be difficult for AMTRAK to furnish the address where the transaction took place. In staff's view, the address which is required by the Regulation is the city and state address where the transaction in fact took place. The goal of the Regulation is to provide the customer with information which will enable him to identify the transactions appearing on his periodic statement. Listing the location of the transaction as Washington, D.C., for all AMTRAK transactions could, in staff's view, be meaningless and confusing to customers who engaged in transactions with AMTRAK which had no relationship with Washington, D.C. This could be especially confusing to frequent users of AMTRAK, and staff believes that alternatives to the method of disclosure you suggest should be explored. For example, transactions in which an AMTRAK ticket is purchased from a travel agency could be structured in such a way that the name of the travel agency and its address would be the proper one to disclose. This will, of course, depend upon the name of the seller disclosed on the document evidencing the transaction. Alternatively, in appropriate cases, the name of the seller could be disclosed as AMTRAK and the address of the seller listed as the city and state of the terminal where the ticket was purchased.

You also ask what the address disclosure should be when the transaction took place in transit on an AMTRAK train. This question as well as other similar types of questions regarding address disclosure have been addressed by the Board in a recent proposed amendment to this section which was sent to you under separate cover. That proposal would provide that the address may be omitted or an appropriate address or designation substituted for it in cases in which a transaction occurs while the customer is in transit aboard a public conveyance such as an AMTRAK train. We would welcome your view on this provision, as well as on the other elements, of the proposal.

Your last question is whether the seller is required to provide the customer with a sales slip describing the property or services purchased or any other document evidencing the transaction. Although no such document is technically required by the Act or Regulation, many of the law's provisions are predicated on the assumption that some such document will be supplied to the customer, both for their own bookkeeping purposes and to insure (generally by the customer's signature) that the customer has indeed agreed to engage in a credit transaction on the account. The contents and form of this document evidencing the transaction are not specifically described by the Regulation but its existence is assumed. For example, in describing transactions, the name to be disclosed on the periodic statement is the name of the seller as disclosed on the document evidencing the transaction. This not only adds some certainty to the Regulation but enables the customer to make a comparison between the periodic statement and the documents evidencing the transaction which he may have retained.

Excerpts from FRB Letter of June 4, 1976, No. 1065, by Jerauld C. Kluckman, Assistant Director.

NUMBER 77

In Mr. Kluckman's absence, I am responding to your letter *** in which you asked whether the Truth in Lending Act or Regulation Z requires any disclosures relating to currency exchange rates when a purchase made in a foreign country is billed on a domestic credit card account periodic statement. In particular, you are concerned whether purchases made in Canada, for which a currency adjustment is made by an amount related to or identical to the exchange rate between Canadian and United States currency on the date the slip is entered on the creditor's computer, need be further explained. You state that it is your client's current practice to show the amount billed in United States dollars as higher than the amount of the purchase in Canada without further explanation of the applicable exchange rate.

In staff's view, nothing in Regulation Z requires a creditor of an open end credit plan to make any disclosures relative to exchange rates when identifying a purchase made in a foreign country on a periodic statement.

Excerpts from FRB Letter of June 29, 1976, No. 1074, by D. Edwin Schmelzer, Acting Chief, Fair Credit Practices Section.

NUMBER 78

This is in response to your letters concerning a requirement in § 226.7(b)(1) of Regulation Z that periodic statements be sent to customers when the account contains a credit balance in excess of $1. Specifically, you ask whether a creditor must continue to send to the customer's current designated address periodic statements for an account with a credit balance in excess of $1 after one such statement has been sent and returned to the creditor by the U.S. Postal Service as undeliverable.

It is the opinion of staff that it would not be necessary to continue sending periodic statements containing credit balances once one is returned as undeliverable by the Post Office. The requirement that a creditor mail or deliver a periodic statement to a customer when the account contains a credit balance in excess of $1 is designed to assure that customers are informed of their current account status. Underlying this requirement is the assumption that the customer is receiving the statement at the address designated for the account. If the customer has moved without providing a forwarding address or the statement is otherwise undeliverable, the underlying informative purpose of the requirement would not be met and it would be necessary to continue sending such periodic statement indefinitely. However, if the customer subsequently designates a new address, the creditor would be obliged to again begin providing periodic statements. Similarly, if the customer subsequently requested a refund of the credit balance, the creditor would be obliged to make the refund.

Excerpts from FRB Letter of July 15, 1976, No. 1088, by D. Edwin Schmelzer, Acting Chief, Fair Credit Practices Section.

NUMBER 79

This is in response to your letter *** and your telephone conversation, regarding the disclosure requirement of § 226.7(a)(7) of Regulation Z. Your question is whether the following disclosure is sufficient to describe a security interest which secures an open end line of credit with the bank. The disclosure is as follows:

"To secure payment of Customer's obligations to Bank under this Agreement [establishing the line of credit], Bank shall upon default acquire a security interest under Article 9 of the Uniform Commercial Code in all property of Customer (other than funds held on deposit) in possession of Bank at the time of default and other property securing other existing and future indebtedness pursuant to any written security agreement between Bank and Customer describing such property."

Your proposal is designed to take advantage of the benefits of security interests the bank has or will have in property of its customer pursuant to other loan transactions. For example, if the bank finances an automobile loan and takes a security interest in the automobile, the bank proposes to use that security interest for the line of credit indebtedness. The question is then whether the above quoted disclosure is sufficient to comply with the requirements in § 226.7 (a)(7) that the security interest be described and identified and that the conditions under which the creditor may retain or acquire it be stated.

In the view of staff, it appears that your proposed disclosure both indicates the conditions under which the creditor may retain or acquire any security interest and describes or identifies the type of interest or interests which may be so retained. Thus, in staff's view, it would appear that the disclosure is sufficient to comply with the requirements of § 226.7(a)(7).

Excerpts from FRB Letter of August 6, 1976, No. 1094, by Dale R. Granchalek, Attorney, Fair Credit Practices Section.

NUMBER 80

This is in reply to your letter *** in which you raised questions regarding rate disclosures under Regulation Z for open end credit accounts.

The facts of the situation over which you are concerned are essentially as follows: The creditors in question provide periodic statements for a monthly billing cycle. All the goods and services provided are for the same price to the cash customers as to the credit customers. There is no arrangement for the debt to be paid in installments, and the balance on each billing statement is due and payable upon the customer's receipt of the periodic statement. Although some accounts may become delinquent and be considered to be in default, the creditors may continue to extend credit to the customer, imposing a 50-cent maximum finance charge in each billing cycle on each account requiring a statement when the account is overdue. According to your letter, the purpose of this charge is to offset the cost of postage and preparation of the periodic statement. No other license charge, service charge, discount, transaction, activity or carrying charge will or may be imposed on the account.

Your question whether, under the facts stated above, the creditor is required to compute and disclose on each periodic statement the 50-cent finance charge reduced to a periodic rate, an annual percentage rate, or both. Exemplifying the type of situation which you have in mind, you state that if the balance of one account is $351.75, the 50-cent finance charge reduced to a periodic rate would be .1434 per cent which reduced to an annual percentage rate is 1.7 per cent; whereas in another account with a balance of $62.43 the periodic rate would approximate .3 per cent which computes to an annual percentage rate of 3.6 per cent. Your question is whether any of these computations must be made and disclosed on the periodic statement.

In staff's view, § 226.5(a)(3)(iii) is controlling in the situation which you present. This section requires the computation and disclosure of an annual percentage rate only with regard to any periodic rate which may be imposed when the total finance charge for a billing cycle of a month or more does not exceed 50 cents or, if shorter than a month, does not exceed a pro rata part of 50 cents. Therefore, since the situation which you describe does not involve the imposition of any periodic rate and the fixed charge does not exceed 50 cents no periodic or annual percentage rate need be computed or disclosed.

Excerpts from FRB Letter of August 6, 1976, No. 1095, by Jerauld C. Kluckman, Assistant Director.

NUMBER 81

This is in reference to your letter of June 19, 1969, regarding a credit plan of your client. Specifically your question relates to whether the plan is subject to the requirements of open end credit or credit other than open end under Regulation Z, Truth in Lending.

Under the plan no finance charge is imposed although extensions of credit are repayable in more than four installments. There is no billing cycle used by the company and no periodic statements are sent. Instead the company uses a passbook similar to the typical passbook used by savings and loan associations. It records each purchase on the day of purchase and each payment or credit when made.

Payments are typically payable in 12 equal monthly installments, with each month running from the day of purchase. Accordingly payment periods differ among individual customers as well as individual purchases by one customer.

Regulation Z defines open end credit as follows:

"'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 installments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance."

To meet the definition of open end credit plan must meet all three criteria. The plan you describe does not satisfy the third test that a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. Accordingly your client would be responsible for making disclosures for credit other than open end as specified in § 226.8 of the Regulation. Since no finance charge is imposed (a fact which the creditor should be prepared to substantiate) your client would omit disclosure of this item and the annual percentage rate.

Excerpts from FRB Letter of July 16, 1969, by Griffith L. Garwood, Attorney.

NUMBER 82

Although the plan described may be equivalent in some respects to open end credit plans used by other department stores, we fail to see how the plan could be classified as open end credit. Since each credit advance is evidenced by new loan agreement setting forth the specific terms of that advance, the plan would not seem to be in accord with item (1) in the definition of open end credit as stated in § 226.2(r) of Regulation Z. Similarly, the plan does not include the issuance of billing statements—a disclosure requirement of open end credit accounts as set forth in § 226.7(b).

To classify the plan as open end credit and to make the disclosures suggested in the note that you sent in with your letter would mean that the customer would be informed only of the annual percentage rate and would not be informed of the amount of the finance charge. Disclosure of the amount of the finance charge is one of the basic elements prescribed by Regulation Z. Accordingly, appropriate disclosures as they relate to credit other than open end should be made for credit transactions under the plan of ***.

Since various interest rates apply to various ranges of balances, you may need to develop special tables to compute the annual percentage rate and the finance charge. Some trade associations have developed special tables to be used by the businesses they serve. Similarly, some financial publishing houses have charts for sale or are able to develop special charts that may fit your needs.

Disclosures under Regulation Z should be based on the original terms of the credit transaction. For example, without verifying the mathematical accuracy of the table in your Exhibit 1, if the $300 obligation were entered into, the finance charge of $69.49 and the annual percentage rate of 26.00% should be disclosed to the customer. On the other hand, if the amount of the obligation is $168.30, a finance charge of $21.19 and an annual percentage rate of 26.50% should be disclosed. We wish to point out that the final payment in the illustration shown on Exhibit 1 would not qualify for the "minor irregularities" provisions of § 226.5(d) in that the amount of that payment is less than 50% of the amount of a regular payment.

It is true that when payments on an obligation are not made on the dates agreed upon, the amount of the finance charge will vary from the amount that would have been collected had the payments been made on the prescribed dates. However, these unanticipated irregularities do not need to be considered in the Truth in Lending disclosures. (D)isclosure of the annual percentage rate and the finance charge should be made on the assumption that all payments will be received as agreed upon.

If a finance charge is assessed, a credit transaction would not be exempt from Truth in Lending merely because it would be repayable in less than four installments. We direct your attention to the definition of consumer credit as stated in § 226.2(k) of Regulation Z.

Excerpts from FRB Letter of September 22, 1969, by Milton W. Schober, Assistant Director.

NUMBER 82

Although the plan described may be equivalent in some respects to open end credit plans used by other department stores, we fail to see how the plan could be classified as open end credit. Since each credit advance is evidenced by new loan agreement setting forth the specific terms of that advance, the plan would not seem to be in accord with item (1) in the definition of open end credit as stated in § 226.2(r) of Regulation Z. Similarly, the plan does not include the issuance of billing statements—a disclosure requirement of open end credit accounts as set forth in § 226.7(b).

To classify the plan as open end credit and to make the disclosures suggested in the note that you sent in with your letter would mean that the customer would be informed only of the annual percentage rate and would not be informed of the amount of the finance charge. Disclosure of the amount of the finance charge is one of the basic elements prescribed by Regulation Z. Accordingly, appropriate disclosures as they relate to credit other than open end should be made for credit transactions under the plan of ***.

Since various interest rates apply to various ranges of balances, you may need to develop special tables to compute the annual percentage rate and the finance charge. Some trade associations have developed special tables to be used by the businesses they serve. Similarly, some financial publishing houses have charts for sale or are able to develop special charts that may fit your needs.

Disclosures under Regulation Z should be based on the original terms of the credit transaction. For example, without verifying the mathematical accuracy of the table in your Exhibit 1, if the $300 obligation were entered into, the finance charge of $69.49 and the annual percentage rate of 26.00% should be disclosed to the customer. On the other hand, if the amount of the obligation is $168.30, a finance charge of $21.19 and an annual percentage rate of 26.50% should be disclosed. We wish to point out that the final payment in the illustration shown on Exhibit 1 would not qualify for the "minor irregularities" provisions of § 226.5(d) in that the amount of that payment is less than 50% of the amount of a regular payment.

It is true that when payments on an obligation are not made on the dates agreed upon, the amount of the finance charge will vary from the amount that would have been collected had the payments been made on the prescribed dates. However, these unanticipated irregularities do not need to be considered in the Truth in Lending disclosures. (D)isclosure of the annual percentage rate and the finance charge should be made on the assumption that all payments will be received as agreed upon.

If a finance charge is assessed, a credit transaction would not be exempt from Truth in Lending merely because it would be repayable in less than four installments. We direct your attention to the definition of consumer credit as stated in § 226.2(k) of Regulation Z.

Excerpts from FRB Letter of September 22, 1969, by Milton W. Schober, Assistant Director.

NUMBER 83

This is in response to your letter of September 25 concerning several questions that you had about disclosure requirements under the Truth in Lending Act. I will respond to your questions in the order in which they appear in your letter.

1. Where a credit sale other than open end is advertised in a promotional mailing § 226.10(d)(2) of the Regulation is applicable, and requires that all items noted in that section be stated. If there is no finance charge applied to the transaction, the annual percentage rate is not required. However, the amount of the downpayment required or the negative statement that no downpayment is required must appear in your advertisement, as specified in § 226.10(d)(2)(ii). of the Regulation.

2. Section 226.8(g) of the Regulation permits a creditor to delay the required disclosures where a request for a credit extension is received by mail or telephone, provided that, in the case of a credit sale, the specified disclosures in § 226.8(g)(1) have been made in advance by means of a catalog of other printed material. Section 226.8(g), in effect, allows this delay where the distributed material meets the advertising provisions of § 226.10(d)(2). If finance charges are not imposed and an annual percentage rate is not applicable, these items are not required. In such a case it would be appropriate to show the cash price and deferred payment price as the same amount.

3. The disclosures required under § 226.8(b) and (c), as applicable, must be supplied to the customer. Since you do not assess a finance charge and there is no annual percentage rate or downpayment these terms need not be shown on the disclosure statement. As you note, the terms cash price, unpaid balance of cash price, unpaid balance, amount financed, deferred payment price and total of payments would be synonymous in a transaction in which there was no downpayment, trade in, other charges, prepaid finance charge, required deposit balance or finance charges. In such cases we recommend that you use the term "Cash Price (Amount Financed)" to connote the concept intended as well as "total of payments" as summary of your payment schedule. All other terms would not be applicable.

Excerpts from FRB Letter of December 16, 1969, by Frederic Solomon, Director.

NUMBER 84

This is in response to your recent inquiry at a conference in our office regarding the proper method for making disclosures for a current sale under § 226.8(b) of Regulation Z prior to the due date of the first payment for that sale.

Your series of sales agreement, providing for the addition of subsequent sales on credit other than open end to an existing account, does not contemplate a rebate of unearned finance charges on the prior balance, but instead imposes a

finance charge only on the "amount financed" in connection with each new purchase. The amount financed plus the finance charge for each new purchase is then added to an existing balance, and the combined total of those sums becomes the new balance or "total of payments" on the entire account. The installment payments are then rescheduled over the permissible maximum term for the amount of that "total of payments," the effect being to extend the payment period of the balance which existed prior to the latest sale beyond its original terms without imposing an additional finance charge for that extension. The problem is the disclosure of the annual percentage rate.

Under the system which you proposed, the annual percentage rate to be disclosed would be that which applies only to the subsequent purchases; a composite annual percentage rate for the entire obligation need not be computed. Of course, this assumes that the customer has approved in writing the annual percentage rate or rates to be applied to each subsequent purchase.

You also posed the question regarding rate charts contained in your catalogs. You distribute catalogs on the basis of geographical areas, and each such catalog contains a rate chart for one or more States within the geographical area where it is to be distributed. Each such rate chart is clearly marked as being applicable to a particular State and is accompanied by a clear and conspicuous statement that if a rate chart is not included for the State of the customer's residence, the customer can obtain such chart from the nearest catalog office. The staff has taken the position that an inapplicable rate chart, if conspicuously shown to be inapplicable, is no rate chart, and if the credit terms table clearly indicates that the credit terms indicated therein are applicable only to a specific geographical area, receipt of that catalog by customers or prospective customers residing outside of that area will not constitute a violation of § 226.10 of Regulation Z.

Excerpts from FRB letter of February 24, 1970, by Milton W. Schober, Assistant Director.

NUMBER 85

Thank you for your letter of August 20, 1969, concerning the disclosure requirements of Regulation Z as they apply to delinquent accounts.

The staff has taken the position that a debt which accrues as a result of a judgment awarded by a court does not constitute "consumer credit" and the method of satisfying that judgment does not constitute a consumer credit transaction. This is true irrespective of whether the person to whom the judgment is awarded is a creditor, permits payment to be made in more than four installments, or imposes a charge for deferring satisfaction of the judgment.

However, in the situation where an agreement is entered into between the parties after an obligation is in default but before judgment has been entered, it is our view that any payout arrangement should be treated as an extension of consumer credit under Regulation Z, provided, of course, that such agreement meets the other requirements of "consumer credit" in § 226.2(k).

In making the disclosures, the creditor should utilize § 226.8(b) and (d) of Regulation Z. This would be true whether the original transaction was classified as "open end credit" or "credit other than open end."

In the situation where a credit transaction in default is reset by extending the maturity or the like on condition that the customer provide additional collateral, the resetting of the loan represents a new transaction under § 226.8(j) of Regulation Z. Because of the requirement of additional collateral, the procedure outlined in § 226.8(l) would not be applicable. If the additional collateral is a security interest in real property which is used or expected to be used as the principal residence of the customer, the transaction would be rescindable under § 226.9. However, the right of rescission would be limited to the new transaction and would not, of course, affect the pre-existing debt.

A debtor who has been discharged from an obligation in bankruptcy may subsequently reaffirm that obligation at the behest of the creditor. In our opinion, since the debtor has been discharged from the obligation in the bankruptcy proceeding, this reaffirmation creates a new debt and should be treated as a new transaction requiring new disclosures.

Excerpts from FRB Letter of May 26, 1970, No. 335, by Griffith L. Garwood, Attorney.

NUMBER 86

The problem posed in your letters deals with the required disclosures at the time a purchase is added on to an existing contract. The hypothetical facts which you presented are as follows:

1. Gross unpaid balance of previous sales contract $650
2. Amount of unearned finance charge at time of subsequent purchase ... $ 50
3. Net unpaid balance of previous contract at date of subsequent purchase $600
4. Rate of computing finance charge is $10 per $100 per annum of the amount financed.
5. There is no downpayment either in cash or by trade-in.
6. Cash price of subsequent purchase is $100
7. No insurance is either offered or sold in connection with the sale.
8. No official fees are charged regarding the sale.
9. For purposes of the example, it is assumed that the security interest is retained in all merchandise sold.

Since the security interest is retained in all merchandise sold, the transaction would not qualify for § 226.8(h), *Series of Sales,* treatment and disclosures would be made pursuant to § 226.8(j). However, pursuant to either section, it would be appropriate to show the following items of disclosure as you suggest:

1. Cash price $100
2. Less: Total downpayment 0
3. Unpaid balance of cash price $100
4. Net balance of prior contract $600
5. Subtotal $700
6. Other charges 0
7. Amount financed $700
8. FINANCE CHARGE ..... $ 70
9. Total of payments $770
10. Deferred payment price $770

If a creditor wished to show the deferred payment price as the total of the cash price plus that portion of the finance charge and other charges applicable to the new purchase, this would be a permissible alternative.

Provisions of State law concerning methods of financing are not relevant; if the above transaction is legal under State law, the disclosure set out would be sufficient to satisfy § 226.8(c).

Excerpts from FRB letter of June 4, 1970, No. 346, by Griffith L. Garwood, Attorney.

NUMBER 87

This is in response to your inquiry of October 14, 1969, regarding the use of the "Rule of 78."

As you are aware, the Truth in Lending Act is basically a disclosure act and, as such, does not prescribe credit terms or conditions. However, under Regulation Z, which was promulgated by the Board ot implement the Act, a creditor must disclose to a customer certain terms of credit transactions using the terminology prescribed in Regulation Z. Neither the Act nor the Regulation specifies the method, if any, to be used in computing finance charge rebates; however, under Section 226.8(b)(7) of Regulation Z, if a creditor rebates unearned finance charges, he must identify the method of computing such a rebate.

As you are probably also aware, the "Rule of 78" and the "Sum of the Digits Method" are precisely the same. The former is simply another title for the latter. In using this method for determining rebates of finance charge, it is our position that the sum of the digits must equal the sum of the total number of payments scheduled to pay the indebtedness. That is, if 12 payments were involved, irrespective of whether they were weekly or monthly, the sum of the digits to be used in the calculation would be 78; similarly, if 26 payments were involved, irrespective of whether they were weekly, biweekly, or monthly, the sum of the digits would be 351. It is our opinion that if weekly payments are involved in a transaction, a disclosure identifying the method of rebating finance charges as the "Rule of 78" would be erroneous if the calculation were based on months rather than weeks.

Excerpts from FRB Letter of November 10, 1969, No. 177, by Robert P. Forrestal, Assistant Secretary.

NUMBER 88

This is in response to your letter of December 14, 1970, concerning the discounts paid by your client when it sells its accounts receivable to various financial institutions. Under your client's operations, all customers are charged a certain finance charge irrespective of the ultimate amount of the discount paid by your client when it sells its receivables. Your question is whether the discount absorbed by your client on some contracts must be included in the finance charge.

The question was prompted by Interpretation 226.406 to Regulation Z dealing with points and discounts. That interpretation was designed to make it clear that discounts paid by the seller must be included in the finance charge *only* to the extent that they are passed on to the buyer. In your situation, the customers pay the same finance charge without regard to whether a discount is finally paid by the seller. Therefore, since the finance charge will not vary depending upon the discount, the amount of the discount need not be separately included in the finance charge.

Excerpts from FRB Letter of January 21, 1971, No. 433, by Tynan Smith, Assistant Director.

NUMBER 89

Your letter concerns § 226.8(j) of Regulation Z as it applies to refinanced transactions in connection with which there is no provision for giving a rebate of any unearned finance charge on the old contract. The second sentence of that section says "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." In the method which you describe, the finance charge is calculated solely with respect to the new amount financed and the outstanding balance on the previous contract is added to the deferred payment price of the current sale with the monthly payment being computed from the total.

A creditor using this method of computing the new outstanding balance and the finance charge should make the initial disclosures based on the current sale; the finance charge on that sale should not be combined with any unearned portion of the finance charge from the previous obligation. The quoted sentence in § 226.8(j) is applicable only to those situations in which the finance charge is calculated on the old balance plus the new amount financed.

Excerpts from FRB Letter of June 8, 1971, No.-488, by Griffith L. Garwood, Chief of Section, Truth in Lending.

NUMBER 90

You indicate that you are in the process of preparing a retail installment sales agreement which will contain all of the disclosures required by Truth in Lending on the front side of the agreement. However, portions of the contract itself will appear both on the front side and on the reverse side of the statement. You intend to have space for the customer's signature at the conclusion of the contract terms, which is on the reverse side of the statement. You question whether this is permissible under Regulation Z.

First of all, it is important to point out that interpretation § 226.801 was written to alleviate a problem in a specific circumstance: when the contract, security agreement (if any), and evidence of the transaction are combined into a single document designed for processing by mechanical or electronic equipment. The provisions of that interpretation apply only in those specific circumstances and in no other. If the retail isntallment sales agreement you are preparing meets the criteria to be eligible for the application of interpretation § 226.801, it would be in accord with the intent of the interpretation to allow the customer's signature on the reverse side, even though all Truth in Lending disclosures were made on the front side and none were made on the reverse.

On the other hand, if the retail installment sales agreement does not qualify for the application of interpretation § 226.801, § 226.8(a)(1) provides that the disclosures must be made together on the same side of the page and above or adjacent to the place for the customer's signature. The Board's staff has consistently held that in such instances, the note or other instrument evidencing the obligation may encompass more than one page, but in such cases, the disclosure could be made only on the side of the page on which the customer's signature is to be placed. Consequently, it would not be permissible under these circumstances for the customer to sign only the reverse side of the page if the Truth in Lending disclosures were made only on the front side.

Excerpts from FRB Letter of October 7, 1971, No. 527, by Jerauld C. Kluckman, Accountant-Analyst.

NUMBER 91

You question whether it is necessary to show the "unpaid balance" pursuant to § 226.8(c)(5) when there are no other charges to be disclosed pursuant to § 226.8(c)(4), and no prepaid finance charges or required deposit balances under § 226.8(c)(6). In those circumstances the "amount financed" would be the same figure as the "unpaid balance of cash price," and the "unpaid balance," and the latter term could appropriately be omitted.

Excerpts from FRB Letter of September 23, 1971, No. 536, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 92

This *** concerns a situation in which a customer has an existing retail installment sales agreement with a merchant which has been assigned to a finance company. The customer executes a second retail installment sales agreement with the merchant covering a subsequent purchase, which will also be assigned to the same finance company. Full Truth in Lending disclosures are made for each individual purchase. At the time of the second purchase, the customer signs a request for consolidation of the two retail instalment sale contracts, which includes the following statement:

> Buyer further understands that if he does not accept the terms of consolidation, he may continue to make payments in accordance with the terms of the existing agreements. However, a payment by the buyer pursuant to the changes and modification made in accordance with the Consolidation Memorandum to be furnished by ... will be deemed complete acceptance by the buyer.

When the second agreement is assigned to the finance company, a memorandum of consolidation and revision of the two retail installment contracts into one obligation (including complete consolidated Truth in Lending disclosures) is sent to the customer. That memorandum of consolidation provides as follows:

> Notice: If the following terms are not acceptable, you may continue to make payments in accordance with the terms of your existing agreements. However, payment made pursuant to this memorandum shall be deemed complete acceptance by you.

It is our staff view that the procedures contemplated by the merchant and the finance company are acceptable under Regulation Z, provided the consolidated disclosures are, in fact, given prior to "consummation" of the consolidation as that term is defined in § 226.2(cc) of Regulation Z. This would, of course, depend upon an analysis of local contract law. Assuming that the consolidation disclosures were given prior to consummation under local law, they would have been given when required under § 226.8(a) so as to fully comply with Regulation Z.

Excerpts from FRB Letter of January 4, 1972, No. 562, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 93

*** questioned whether attorney's fees and other foreclosure costs constitute charges for which disclosures must be made under § 226.8(b)(4) of Regulation Z.

It is staff's opinion that the thrust of the late payment, delinquency, or default disclosure required under § 226.8(b)(4) relates basically to the types of charges which a creditor may assess automatically, without other conditions, when a late payment, delinquency, or default occurs. However, if the charge is not automatic, but is based on the employment of the services of an attorney to effect collection or consists of other fees and charges payable in conjunction with foreclosure proceedings, such charges would not fall in the normal realm of charges to be disclosed under § 226.8(b)(4). The charges described in your letter appear to be based upon taking foreclosure action and employing the services of an attorney. Consequently, it would not appear that such charges need to be disclosed under § 226.8(b)(4).

Excerpts from FRB Letter of April 10, 1972, No. 591, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 94

This is [on] the application of Regulation Z to the following fact situation:

> "A client of mine recently obtained a loan from a local finance company in the approximate amount of $1,900 with payments of $78.00 per month for 24 months. This agreement apparently contains the necessary disclosures required by Regulation Z. Subsequent to the execution of this agreement my client defaulted in the payment of said promissory note and at the request of the finance company entered into several new agreements which simply reduced the amount of the payment to $40.00 per month, for a period of six months, at which time the payments were to be re-negotiated between the parties. These refinance agreements did not contain any charges for the deferral or extension of said loan payments. There were no disclosures made of any kind in regard to this agreement."

The question is whether the new agreements reducing the monthly payment and calling for a renegotiation of the payments at the end of six months is a refinancing subject to § 226.8(j) of the Regulation or a deferral or extension subject to § 226.8(l).

As you have indicated, our public information letter No. 335 provides staff's view that where an agreement is entered into between the parties after obligation is in default and before judgment has been entered, any payout arrangement should be treated as an extension of consumer credit under Regulation Z. In addition, public information letter No. 441 reflects staff's view that, generally arrangements which call for a completely different payment schedule, as opposed to the mere deferral of a payment or the extension of the maturity date of an obligation should be considered refinancings as opposed to deferrals or extensions.

Consequently, it is staff's opinion that the situation you describe calling for a reduction in monthly payments for a certain period and a subsequent renegotiation of the payments is a refinancing subject to the provisions of § 226.8(j).

Excerpts from FRB Letter of August 17, 1972, No. 629, by Jerauld C. Kluckman, Accountant-Analyst.

NUMBER 95

This is [on] the application of § 226.8(b)(6) of Regulation Z to the prepayment of a simple interest note, for example a 60-day term note. You indicate that a creditor may require a borrower who prepays such a note to pay interest for the full term of the obligation, or to pay a minimum interest charge.

It is staff's view that charges of this type are "penalty charges" which require disclosure under § 226.8(b)(6).

Excerpts from FRB Letter of August 20, 1973, No. 712, by Griffith L. Garwood, Adviser.

NUMBER 96

This is [on] your letter of August 27, 1973, in which you requested the staff views on the meaning of interpretation 226.402 of Regulation Z. Specifically, in reference to *Philbeck v. Timmers Chevrolet, Inc.* (N.D. Ga. 1973.) (CCH *Consumer Credit Guide* ¶98,978), you asked whether it was the Board's intent by interpretation 226.402 to require that the term of credit life insurance be shown in connection with the disclosures under § 226.4(a)(5) when that insurance is written for the full term of the obligation. The staff believes that it is important to respond to your question in view of the possible ambiguity of the language in the interpretation, as well as the questions raised by the *Philbeck* decision regarding the adequacy of the disclosures presently used by thousands of creditors throughout the nation.

Section 106(b) of the Truth in Lending Act permits the premiums for credit life, accident or health insurance which is written in connection with a consumer credit transaction to be excluded from the finance charge if the insurance is not required, this fact is disclosed, and the borrower elects to receive the coverage after disclosure of the cost thereof. Likewise, § 106(c) permits the premiums for insurance against loss of or damage to property or against liability to be excluded from the finance charge where the borrower is entitled to choose the person through which the insurance is to be obtained, and the cost of the insurance is disclosed to him. The corresponding provisions in § 226.4(a)(5) and (6) of Regulation Z likewise require the "cost" of the insurance to be disclosed.

In May of 1969, shortly before the Regulation was to become effective, the Board was confronted with the question of what "cost" should be disclosed under these provisions where policies for less than the full term of the obligation were being offered. This might occur, for example, in the case of property insurance where the policy would be written for only a few years at a time, and where the premium would be adjusted from time to time thereafter in connection with subsequent purchases of insurance. Moreover, in some cases, property insurance might not be required for the full term of the obligation. Likewise, in some cases, credit insurance (particularly mortgage insurance) may be written for less than the full term of the obligation. In such circumstances the question arose as to what "cost" should be disclosed to meet the provisions of § 226.4(a)(5) and (6). Interpretation 226.402 was issued to answer that question.

The issue was framed in the opening paragraph of interpretation 226.402 as "whether such amounts of cost disclosed must include the cost of insurance for the full term of the transaction." The answer was given that where the cost of insurance is not required to be included in the finance charge the cost to be disclosed need only be the cost for the term of the "initial" policy or policies, as long as accompanied by a statement of the type of insurance and the term. In other words, while the Board did indicate that the cost disclosure requirements could be met by disclosing the cost for less than the full term of the obligation, in such cases it believed that the consumer should be placed on notice that the quoted premium was for less than the full term of the obligation.

We believe it was not the Board's intent to add a blanket requirement to either § 226.4(a)(5) or (6) by interpretation 226.402 that in all cases in which the insurance cost is disclosed the term of the obligation must also be shown. Specifically, in our opinion the term of the insurance coverage need not be shown where the coverage is for the full term of the obligation.

Excerpts from FRB Letter of October 26, 1973, No. 724, by Griffith L. Garwood, Adviser.

NUMBER 97

This is in response to your letter of December 3, 1973, inquiring about the combination of certain terminology required under Regulation Z on a credit sale disclosure form relating to a transaction on which no finance charges or other charges are assessed.

Staff believes that under the circumstances, the combination of the "cash price" and "deferred payment price" is appropriate, as well as the combination of the terms "unpaid balance of cash price," "unpaid balance," "amount financed," and "total of payments."

It may be that you want to eliminate some of the terms which are not applicable. Copies of our letters number 213 and 536 on this subject are enclosed for your reference.

We note that the disclosure of payments in item #4 does not show the number of payments as required under section 226.8(b)(3).

Excerpts from FRB Letter of December 28, 1973, No. 740, by Griffith L. Garwood, Adviser.

NUMBER 98

This is in response to your letter dated March 6, with respect to the disclosures which should be made under Regulation Z in a credit sale in which two notes or contracts which provide for consecutively scheduled payments are taken to finance the purchase.

As we understand the example set forth in your letter and enclosure, the creditor, a seller of goods and services, would accept from the customer in a sale, two installment payment contracts. One contract, which will be referred to as the first contract, would be payable in equal monthly installments and the amount financed would be one-half of the balance of the cash price after allowing for a downpayment in cash. The second contract would have as its amount financed, an amount equal to the remainder of the cash price. The finance charge on the second contract would begin to accrue at the maturity of the first contract unless the customer elects to pay the amount financed in full at maturity of the first contract. The customer has the option, however, to pay the second contract in scheduled payments. The creditor may discount either or both contracts at a bank. You ask for an opinion as to the disclosures which should be made under Regulation Z in the described circumstances.

The foregoing method of financing appears to be similar to the financing of a dwelling in which first and second mortgage notes are involved. (See Public Information Letters No. 396 and 523.) In the method under discussion and irrespective of the maturity and scheduled payments, each contract would be considered a transaction for which required Regulation Z disclosures should be made. The first contract would require disclosures under § 226.8(b) and (c) for a credit sale. The second contract would require disclosures under § 226.8(b) and (d) as a loan. The proceeds or amount financed under the second contract would be considered a part of the downpayment and should be disclosed under § 226.8(c)(2).

In the example cited in the enclosure with your letter, the cash price would be disclosed under § 226.8(c)(1) as $1495. A downpayment of $95 in cash should be disclosed under § 226.8(c)(2) along with a further downpayment of $700 (the amount financed by means of the second contract), leaving $700 to be disclosed under § 226.8(c)(3) as unpaid balance of cash price and as amount financed under § 226.8(c)(7). A finance charge computed by application of a 7% add-on rate results in $245 to be disclosed under § 226.8(c)(8) with respect to the first contract.

With respect to the second contract, the $700 amount financed should be disclosed under § 226.8(d)(1) and the $245 finance charge, determined by application of a 7% add-on rate, under § 226.8(d)(3). Since the finance charge begins to accrue on a date other than the date of the transaction, that date should be specified under § 226.8(b)(1).

Each contract is payable in 60 monthly payments of $15.75 each with total of payments, $945, to be disclosed under § 226.8(b)(3), showing the scheduled payments consistent with the respective terms of the contracts. There would be no balloon payment to disclose. In both contracts, the annual percentage rate to be disclosed under § 226.8(b)(2) is 12.5%.

The foregoing discussion, which expresses the opinion of our staff, deals only with those disclosure items mentioned and does not alter or affect the responsibility of the creditor to comply with other applicable disclosure requirements of Regulation Z.

Excerpts from FRB Letter of April 4, 1974, No. 769, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 99

This is in response to your letter dated March 15 in which you ask for staff's opinion as to the application of Regulation Z with respect to certain requirements of your fur-dealer client set forth as follows:

> "Seller requires in connection with this credit transaction that Buyer obtain for the period of this Agreement Professional Fur Care and Insurance covering all risk of loss of the Goods, including without limitation loss by fire, theft, or other casualty, and providing for proper processing when needed, said insurance not to be less than the CASH PRICE shown above (such insurance and Professional Fur Care herein called 'Fur Care'); seller will provide Fur Care to Buyer at a cost of $ . . . . . , which may be included as part of the credit extended and shown under OTHER CHARGES above."
>
> "Buyer may choose the person through whom Fur Care is to be obtained, but such Fur Care or person may be rejected by Seller for reasonable cause."

In essence, those conditions require the customer to (1) provide insurance coverage on the furs which are the subject of the contract, and (2) provide purchased care and storage of the furs. The conditions further provide that subject to the creditor's right of refusal for reasonable cause, the customer may obtain the insurance coverage and the care and storage services from a person of his choice.

Although we have no question with respect to excluding from the finance charge, charges or premiums for the required insurance written in connection with the transaction if properly disclosed under § 226.4(a)(6) of Regulation Z, there is nothing in the Truth in Lending Act or Regulation Z which would permit excluding from the finance charge, charges directly or indirectly imposed by the creditor for service, irrespective of any option the customer may have to obtain those services from any person of his choice.

It is staff's opinion that that portion of the total charge for insurance, fur care, and storage which is attributable to fur care and storage services is a finance charge under § 226.4(a) of Regulation Z which should be so disclosed. In this connection, it may be that the amount of the total charge attributable to the insurance charge and the amount attributable to the fur care and storage charges may not be known precisely and may need to be estimated under § 226.6(f).

If, however, the care and storage services which the customer could obtain at his option and no requirement in that respect were imposed by the creditor, then the cost of such services, if purchased and financed in the transaction, should be disclosed under § 226.8(c)(4) of Regulation Z and such cost would not be considered a finance charge.

Excerpts from FRB Letter of April 4, 1974, No. 773, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 100

This is in response to your letter dated April 24 with which you enclosed a copy of a letter dated April 15 from ***. That inquiry asks for an opinion with respect to the requirements of § 226.8(d)(1) and (2) and § 226.8(e)(2) of Regulation Z in the following circumstances:

The bank offers a package of services to its customers who maintain a regular savings account with a balance of $500 or more. One of the services in the package program is a lower rate for financing a new automobile. If the savings account balance is reduced below $500, the customer's rate on his automobile loan increases to the regular rate applicable to such loans when made outside of the package program. The question is whether the $500 balance which the customer must maintain to receive the benefits of the full package of services is a required deposit balance under § 226.8(3)(2) which, in connection with a loan transaction, must be excluded from the amount financed which is disclosed under § 226.8(3)(1).

In accordance with previous analogous positions taken by the Board (§ 226.407) and this staff (Public Information Letter No. 656), we regard the $500 balance not as "a condition to the extension of credit" but rather as a condition for participation in a banking service program. Therefore, the $500 deposit need not be treated as a required deposit balance for Truth in Lending purposes. We would caution, however, that the additional benefits of such service plans should be substantial and not merely gimmicks included to evade the Act's disclosure purposes. We note that the plan in question includes a no-charge checking account as well as a free safe-deposit box.

In reply to your second question, there is no reason why the bank may not use the words "reduced rate" or "preferential rate" in advertising the package program, neither of which would trigger any disclosure requirements under § 226.10(d)(2) of the Regulation.

Excerpts from FRB Letter of May 29, 1974, No. 805, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 101

This is in response to your letter of September 3, describing a credit sale transaction wherein the customer selects an item, makes a deposit, and applies for an extension of credit to finance the purchase of the item. The deposit is fully refundable, and there is no contractual obligation to buy until the customer has been accepted and a security agreement stating the credit terms is signed by the customer. You ask whether consummation for purposes of § 226.8(a) of Regulation Z should be considered at the time that the customer signs the security agreement and becomes bound to purchase the item or at the time he makes the refundable deposit.

In § 226.2(cc), consummation of a transaction is defined as the time a contractual relationship is created between the creditor and a customer. In the transaction you describe, it would appear that no contractual relationship is created until the customer accepts and signs the security agreement; therefore, Truth in Lending disclosures would not be required at the time the refundable deposit is made. It is sufficient for purposes of the Regulation to make the disclosures before the customer binds himself to the transaction by signing the security agreement. Of course, in determining whether a contractual relationship is created, it is necessary to look to the law of the jurisdiction in which the transaction takes place. Thus, if a contractual relationship is created under State law at the time the deposit is made, then there would be consummation at that time for purposes of Truth in Lending.

I am enclosing a copy of letter number 623 relating to a somewhat similar problem in connection with consummation of credit sales in automobile purchase transactions, which you may find relevant to this question as well.

Excerpts from FRB Letter of September 13, 1974, No. 841, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 102

This is in response to your letter of June 26, inquiring whether an acceleration clause in an installment contract is a "charge" payable in the event of late payment within the meaning of § 226.8(b)(4) of Regulation Z and therefore must be disclosed with other required items.

For the purposes of Truth in Lending disclosures, this staff views an acceleration of payments as essentially a prepayment of the contract obligation. As such, the disclosure provisions of § 226.8(b)(7) of the Regulation, which require the creditor to identify the method of rebating any unearned portion of the finance charge or to disclose that no rebate would be made, apply. If the creditor rebates under one method for acceleration and another for voluntary prepayment, both methods would need to be identified under § 226.8(b)(7). Failure to disclose the method of rebate or nonrebate would be a violation of the Truth in Lending Act.

If, under the acceleration provision, a rebate is made by the creditor in accordance with the disclosure of the rebate provisions of § 226.8(b)(7), we believe that there is no *additional* "charge" for late payments made by the customer and therefore no need to disclose under the provisions of § 226.8(b)(4). On the other hand, if upon acceleration of the unpaid remainder of the total of payments, the creditor does not rebate unearned finance charges in accordance with the rebate provisions disclosed in § 226.8(b)(7), any amounts retained beyond those which would have been rebated under the disclosed rebate provisions represent a "charge" which should be disclosed under § 226.8(b)(4).

Excerpts from FRB Letter of October 22, 1974, No. 851, by Frederic Solomon, Director.

NUMBER 103

This letter responds to your request *** for advice as to when deferral of payments is to be considered a refinancing for purposes of § 226.8(j) of Regulation Z. You state that your client, a commercial bank, desires to reduce the amount of a mobile home loan monthly payment for a period of six months and to increase later monthly payments to make up for the reduction without extending the terms of the loan agreement. You have inquired as to whether such an arrangement would constitute a refinancing of the existing extension of credit under § 226.8(j) or whether it should be considered a deferral or extension of the obligation under § 226.8(l).

In Public Position Letters 753 and 770, staff has expressed its view that, when a creditor enters into an agreement with a customer to change any of the repayment terms of a loan contract, other than open end credit, such a modification is a refinancing subject to § 226.8(j) unless the change falls within the deferral or extension provisions of § 226.8(l). Staff believes that the changes contemplated by § 226.8(l) are only those instances in which one or mroe full payments under a contract are deferred or extended to a later date and that agreements to modify scheduled payment amounts, even though no additional charge is imposed, do not qualify for § 226.8(l) treatment.

For this reason, it is the view of staff that a changed payment plan such as you have proposed must be classified as a refinancing, and the disclosure requirements of § 226.8(j) must be met.

Excerpts from FRB Letter of March 21, 1975, No. 882, by Jerauld C. Kluckman, Chief, Fair Credit Practices Section.

NUMBER 104

This is in response to your letter *** requesting staff's interpretation of the term "meaningful sequence" as used in § 226.6(a) of Regulation Z.

In the recent case of *Allen v. Beneficial of Gary, Inc.*, the court quoted from staff's Public Information Letter 780, dated April 10, 1974, in considering whether a particular set of disclosures was made in meaningful sequence as required by the Regulation. That staff letter states that "meaningful sequence" requires that those prescribed disclosures which have some arithmetical relationship to each other be presented in a logical order or progression. The *Allen* decision has been interpreted by some to mean that the various disclosure elements must be arranged in a "summation column," as opposed to a subtractional order, in order to comply with the requirement for a meaningful sequence.

Neither § 226.6(a) nor Public Information Letter 780 sets forth any particular "arithmetical progression" which must be used in making disclosures. In staff's opinion, the Regulation does not require all presentations to be made within the rigid confines of some particular series of additions or subtractions. In fact, we believe it is not really appropriate to speak of a "summation" or "subtrac-

tional" method as though these were two separate and mutually exclusive types of disclosures. In order to comply with the requirements of § 226.8, most disclosure statements would necessarily involve both additions and subtractions of various items. For example, a disclosure beginning with the total of payments, which some might characterize as a subtractional method, would probably involve an addition process in disclosing an amount financed which includes other charges or a finance charge composed of more than one component. In contrast, a disclosure beginning from the amount of loan proceeds, which would apparently be considered a summation method, would require a series of subtractions if the transaction involved a prepaid finance charge and/or a required deposit balance. We believe that the invalidity of attempting to categorize disclosure methods in this way may be illustrated by the provisions of § 226.8(c). The series of disclosure items outlined in that section involve a mixture of subtractions and additions which cannot, in our view, be described with some particular arithmetical label.

In staff's view, "meaningful sequence" cannot—and should not—be defined by reference to some rigid concept of arithmetical progression. Since a primary purpose of this requirement and of the Truth in Lending Act as a whole is to adequately inform consumers of the terms and costs of credit, we believe that § 226.6(a) requires that related terms be presented in an order which will assist the customer in understanding their relationship. Given the wide variety in credit transactions, "meaningful sequence" must be determined by reference to the particular set of disclosures under consideration. An arrangement of elements which is suitable for one type of transaction may not necessarily be adequate for another type of transaction. So long as the placement makes clear the relationship among the various disclosure terms, a disclosure statement may still be in compliance with § 226.6(a) even though the terms are placed in a horizontal (see Exhibit E in the Board's earlier Regulation Z pamphlet) rather than a vertical order or in a descending rather than ascending progression.

Excerpts from FRB Letter of May 20, 1976, No. 1047, by Jerauld C. Kluckman, Assistant Director.

NUMBER 105

This is in response to your letter *** regarding our previous correspondence on disclosure of a security interest in after-acquired property under § 226.8(b)(5) of Regulation Z.

In staff's letter of January 9, we indicated that a creditor need not state the conditions or limitations imposed by State law in the disclosure of a security interest in after-acquired property under § 226.8(b)(5). Specifically, it would not be necessary for a creditor to provide a statement of the effect of § 9-204 of the Uniform Commercial Code on security interests in after-acquired property.

You state that certain retail installment contracts indicate that the creditor is reserving an interest in all after-acquired property including all attachments, substitutions, and replacements, without any indication of the limitations imposed by § 9-204. You ask whether this would constitute a violation of either § 226.6(c) or § 226.8(b)(5) of the Regulations.

It appears from your letter that these creditors are disclosing a security interest in "all after-acquired property" or "all after-acquired property including all attachments, substitutions, and replacements." If, in fact, the applicable State law only permits acquisition of a security interest in after-acquired proeprty acquired within a certain period of time, then such a statement would be improper under Regulation Z. As our previous letter indicates, a simple disclosure of the fact that after-acquired property may be subject to the security interest would be sufficient to comply with the clear language of § 226.8(b)(5), without an explanation of the various conditions and limitations on such interests which may be imposed by the applicable State law. However, the fact that the creditor need not disclose such limitations and conditions does not mean that the creditor may affirmatively misstate the scope of the security interest, in disregard of those limitations. If, in fact, the creditor discloses an interest in *"all* after-acquired proeprty," when the interest would actually attach only to property acquired by the borrower within a certain period of time, such a disclosure would be inaccurate and misleading in violation of Regulation .

Excerpts from FRB Letter of May 28, 1976, No. 1053, by Jerauld C. Kluckman, Assistant Director.

NUMBER 106

This is in response to your letter *** regarding the disclosure of a security interest under § 226.8(b)(5) of Regulation Z.

In connection with some consumer credit transactions, a bank may require a customer to execute a security agreement which will secure future indebtedness as well as the current transaction. When the bank makes a subsequent loan to that customer, the disclosures made at that time include a reference to the security agreement executed in connection with previous transactions, indicating that any security agreement made in connection with another extension of credit also secures the particular transaction.

You asked whether, in connection with the subsequent credit transactions, the bank is required to furnish the customer with copies of those prior security agreements.

Section 226.8(b)(5) requires a description of any security interest held or retained or acquired by the creditor in connection with the credit extension, and a clear identification of the property to which the security interest relates. If the property is not identifiable, the creditor must provide an explanation of the manner in which a security interest in that property may be retained or acquired.

Since the security interest arising from the previous transaction does in fact secure the subsequent extension of credit, that prior security interest is retained in connection with the current transaciton. Therefore, compliance with § 226.8(b)(5) is required with respect to disclosure of that security interest.

In staff's opinion, a creditor holding a security interest which arises from a previous transaction may comply with this section in one of two ways. First, the creditor may provide a copy of the previous security agreement which sets forth the type of the security interest held and identifies the subject property. In the alternative, the creditor may include a description of the security interest and the subject property on the disclosure statement given in connection with the current credit transaction. When the creditor chooses the first alternative, the current disclosure statement or other document containing the current disclosures should refer to that separate security agreement.

You indicate that in certain cases it may be impossible for the bank to comply with such a requirement because of the limitations imposed by the Equal Credit Opportunity Act and Regulation B. For example, if a married woman applies for a loan in her maiden name, without indicating that she is married, a search of the bank's files would not reveal any prior outstanding secured loans made jointly to the woman and her husband in the husband's name. Apparently, you are concerned that the Equal Credit Opportunity Act would prohibit the bank from ascertaining the married name of the applicant. For your information, we enclose a copy of a recent letter published by Board staff, which indicates that a creditor may ask an applicant to disclose any other names he or she has used in applying for credit. Thus, nothing in that Act would prevent a bank from inquiring whether a customer has any prior outstanding loans with the bank under another name. This inquiry should enable the bank to readily determine the existence of any previous security agreements which must be disclosed in connection with the current transaction.

Excerpts from FRB Letter of June 4, 1976, No. 1068, by Margaret Ann Stewart, Attorney, Fair Credit Practices Section.

NUMBER 107

This is in response to your letter *** in which you raised two questions concerning discounts for payment in cash as provided for in § 226.4(i) of Regulation Z.

In your letter you indicated that your client sells a service which can be purchased by cash, credit card, or installment contract. Currently, the price of your client's service to cash, credit card, and installment-contract customers is $100.

Your first question is whether § 226.4(i) permits your client to offer a 5% discount to all of its customers whether or not they elect to pay by cash or by credit card and continue to disclose to installment customers a cash price of $100. Staff is of the opinion that § 226.4(i) has no applicability to this fact situation. Section § 226.4(i) speaks only in terms of a discount, offered for the purpose of inducing payments for a purchase by cash, check, or similar means rather than by use of an open end credit card account. In the fact situation which you have posed, the discount is given to the customer regardless of whether he purchases by cash or by credit card. The purpose of such discount is clearly not to induce payment by cash, check, or similar means. In this fact situation, Regulation Z requires that the cash price be disclosed to installment customers as $95.

Your second question concerns the cash price which must be disclosed to installment customers in the situation where your client offers a 5% discount (or a price of $95) to all customers who purchase by cash, check, or similar means rather than by credit card. You have asked whether your client can continue to disclose a cash price of $100 to installment customers in this fact situation. You have pointed out that, if the cash price must be disclosed as $95, your client must reduce the amount of finance charge imposed upon the installment customer in order to reduce the finance charge to within the maximum limits allowed by State usury law (assuming that the finance charge was previously set at the maximum allowed by State law). You maintain that this fact will, in all likelihood, discourage creditors from offering a 5% discount for cash.

Staff is of the opinion that in this second fact situation the cash price which must be disclosed to installment purchasers is $95. Although, as you have pointed out, this may discourage creditors from offering discounts for payment in cash, staff feels that it would be improper to disclose to installment purchasers a cash price of $100 when no cash purchasers pay $100. Staff feels that the Act's primary purpose of disclosure of the cost of credit is better served if the cash price is disclosed as $95 in this fact situation.

Excerpts from FRB Letter of June 6, 1976, No. 1070, by D. Edwin Schmelzer, Acting Chief, Fair Credit Practices Section.

NUMBER 108

This is in response to your letter *** enclosing correspondence from . . . , concerning a Lender's Comprehensive Single Interest Insurance Policy which has been offered to his bank by an agent of . . . Insurance Company.

The agent stated that the insurance company will waive subrogation rights and that, therefore, premiums paid for these coverages are excludable from the finance charge providing that the creditor complies with the requirements of § 226.4(a)(6). . . . has asked for a staff opinion as to the accuracy of this statement.

In his letter, . . . indicated that the Lender's Comprehensive Single Interest Insurance Policy includes the following separate coverages:

1. All Risks Physical Damage Installment Loan Insurance (Vendor's Single Interest)
2. Instrument Non-filing Insurance (errors and omissions)
3. Confiscation and Skip Insurance
4. Repossessed Vehicle Insurance
5. Holder in Due Course Insurance

Of the five types of insurance under this Lender's Comprehensive Single Interest Insurance Policy, the All Risks Physical Damage Installment Loan Insurance and the Confiscation and Skip Insurance are both generally included under the term "Vendor's Single Interest Insurance," and their inclusion in the finance charge calculation is governed by § 226.4(a)(6). Instrument Non-filing Insurance is covered by § 226.4(b)(2), and Repossessed Vehicle Insurance and Holder in Due Course Insurance are charges of the type addressed by § 226.4(a)(7) and normally must be included in the computation of the finance charge.

The staff is of the opinion that the inclusion of all these separate policies within a single policy of Lender's Comprehensive Single Comprehensive Single Interest Insurance does not change the character of these policies and, therefore, does not change the requirements of Regulation Z relating to disclosure requirements for these policies. Consequently, in order to comply with Regulation Z, a creditor offering the five above mentioned policies under a single policy of Lender's Comprehensive Single Interest Insurance would have to break the total policy price down to disclose the price attributable to each type of insurance. The charges attributable to the All Risks Physical Damage Installment Loan Insurance and the Confiscation and Skip Insurance could be excluded from the finance charge calculation if the insurer waives his subrogation rights and provides the customer with a clear, conspicuous and specific statement in writing setting forth the cost of the insurance if obtained from or through the creditor and stating that the customer may choose the person through whom the insurance is to be obtained; otherwise, the cost of such insurance would have to be included in the finance charge. The charge for Instrument Non-filing Insurance could be excluded from the finance charge if it is itemized and disclosed to the customer and it does not exceed the fees or charges prescribed by law for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction. Finally, the charges for Repossessed Vehicle Insurance and Holder in Due Course Insurance would have to be included in the finance charge computation in accordance with § 226.4(a)(7).

Excerpts from FRB Letter of July 6, 1976, No. 1075, by Jerauld C. Kluckman, Assistant Director.

NUMBER 109

This is in response to your letter *** regarding the disclosures required by Regulation Z on the refinancing of a note.

The bank which you represent purchases notes and purchase-money security agreements from automobile dealers. In some cases, customers whose obligations are represented by the notes may request the bank to reschedule the payments so as to reduce the amount of each payment but extend the period of time during which monthly payments are made. As your letter indicates, such a rescheduling would constitute a refinancing under § 226.8(j) of Regulation Z, which requires disclosures applicable to a new transaction. You ask a series of 14 questions regarding the specific disclosures required on such refinancing.

Before responding to your specific questions, we would like to point out that the disclosures required on such refinancing are those applicable to loans and other nonsale credit, pursuant to §§ 226.8(b) and 226.8(d), rather than those applicable to credit sales under §§ 226.8(b) and 226.8(c). Under §§ 226.2(t) and 226.6(d), credit sale disclosures are required only in those cases where the seller is extending or arranging credit, but in this situation the seller is not a party to the refinancing.

Turning to your 14 questions in the order in which you presented them, we would make the following comments:

1. The schedule of repayments disclosed pursuant to § 226.8(b)(3) should reflect the terms of the refinancing. In staff's opinion, it would not be necessary to repeat the disclosure of the amount and due dates or periods of payments scheduled on the original transaction which are no longer applicable.

2. The total of payments to be disclosed under § 226.8(b)(3) should be the amount applicable to the refinanced transaction.

3. Under § 226.8(b)(4), the bank must disclose the amount or method of computing the amount of any default, delinquency, or similar charges which would be payable in the event of late payments on the refinanced transaction.

4. The bank is required on refinancing to provide the customer with the disclosures required by § 226.8(b)(5), relating to security interests. Thus, the creditor would have to redescribe the type of security interest held and reidentify the collateral upon refinancing. Assuming that the type of interest and the nature of the collateral remain unchanged, we believe that this disclosure could be made by providing the customer with a copy of the security agreement taken in connection with the original transaction, with a reference to that agreement made on the document containing the new disclosures.

5. If an after-acquired proeprty clause applicable to the original transaction would also apply to the refinancing, the fact that after-acquired property would be subject to the security interest must be disclosed to the customer on the refinancing.

6. As stated in paragraph 4 above, the creditor must disclose the type of security interest retained, pursuant to § 226.8(b)(5). Whether or not the security interest on refinancing would remain a purchase-money security interest to be disclosed as such or whether some other description would be appropriate depends on the way the security interest is characterized by the applicable State law.

7. In a transaction subject to § 226.8(b)(6), it would be necessary for the creditor to redisclose any penalty charge that may be imposed on the customer for repayment of the obligation. However, since the transaction you describe appears to involve precomputed finance charges, rather than simple interest charges to which § 226.8(b)(6) applies, no disclosures under this section should be necessary. Instead, the creditor would make disclosures pursuant to § 226.8(b)(7).

8. As stated above, if the new transaction involves precomputed finance charges, it would be necessary for the creditor to indicate either the method of computing rebates of unearned finance charges in the event of prepayment or the fact that no rebate will be made.

9. As we pointed out initially, the bank would be required to make loan disclosures rather than credit sale disclosures on refinancing of the obligation. Thus, the disclosure terms required by § 226.8(c), such as "cash price" and "total downpayment," would not be applicable.

10. No disclosure of the "unpaid balance of the cash price" pursuant to § 226.8(c)(3) would be made on refinancing.

11. Disclosure of the other charges included in the amount financed, which would be made pursuant to § 226.8(d) rather than § 226.8(c), requires itemization of the specific charges included in the amount of credit with respect to the refinancing. However, staff does not believe that it would be necessary for the bank to itemize those other charges which were previously included in the amount financed and disclosed to the customer on the original transaction.

12. No disclosure on the "unpaid balance" pursuant to § 226.8(c)(5) would be made on the refinancing.

13. The finance charge to be disclosed to the customer should be that charge which is imposed with respect to the refinancing.

14. The term "deferred payment price" would be inapplicable.

Excerpts from FRB Letter of July 14, 1976, No. 1080, by D. Edwin Schmelzer, Acting Chief, Fair Credit Practices Section.

NUMBER 110

This is in response to your letter *** in which you raised a question concerning the timing of Truth in Lending disclosures under a plan involving the conversion of an open end credit account to an installment loan.

As you have described the plan in question, the customer and the bank enter into an agreement setting up an overdraft checking account. In conjunction with this account, the bank issues a check cashing card which serves to guarantee checks written by the customer. A provision of the customer-bank agreement provides that in the event of default, the bank may terminate the overdraft account and, on written notice to the customer, convert the unpaid balance of the account to an installment loan.

In your letter, you indicated that when the bank decides to exercise its conversion right, it first cancels the overdraft line of credit and sends a written notice of cancellation to the customer. The cancellation notice advises the customer that his overdraft privileges have been terminated and that the bnak will be converting his outstanding balance to an installment obligation. The notice of cancellation also informs the customer of the annual percentage rate that will apply to the installment loan and notifies the customer that a complete disclosure statement will be sent to him on the date of conversion. The bank will not make overdraft advances on any checks written after the cancellation date. Checks which would have resulted in an overdraft advance are either rejected (if a check cashing card was not used) or allowed to overdraw the customer's checking account (if a check cashing card was used).

After mailing the notice of cancellation, the bank waits 10 days before converting the outstanding account balance to an installment loan. This 10-day period is designed to allow adequate time for the clearing of any checks written prior to the cancellation date. On the conversion date, the bank converts the outstanding balance to an installment loan and mails the customer a statement containing the disclosures required by § 226.8(b) of Regulation Z. This statement is signed by an officer of the bank and serves as the equivalent of an installment credit note. The customer is not required to sign a copy of the conversion letter since the customer's signature on the initial agreement constitutes contractual consent for the conversion.

You have asked whether the conversion procedure set forth above satisfies the requirements of § 226.8(a) that applicable Truth in Lending disclosures be made "before the transaction is consummated." As an initial matter, staff agrees with your conclusion that § 226.8 disclosures are required upon the exercising of the conversion option. However, staff feels that "consummation" in this plan occurs upon the sending of the cancellation notice and that the plan, therefore, does not comply with the requirements of § 226.8(a) regarding the timing of the disclosures. Section 226.2(kk) provides that consummation occurs "at the time a contractual relationship is created between a creditor and a customer . . . " You stated in your letter that the cancellation notice informs the customer that the bank has decided to convert the open end account to an installment obligation, and since the customer has already consented to the conversion in the master agreement, he is bound on the installment obligation without any further action on his part. On the basis of this information, staff is of the opinion that consummation occurs upon the sending of the notice of cancellation and that the applicable § 226.8 disclosures should be given at that time. Since there is some information which is unknown at the time of sending the cancellation notice, estimates may be used. Although it is not required, it would be helpful for the bank to continue its practice of sending disclosures updating the estimated information once such information becomes known.

As an alternative to sending estimated Truth in Lending disclosures upon sending the notice of cancellation, your client may desire to restructure his plan in such a manner that the sending of the notice of cancellation would not constitute consummation of the transaction. One possible method would be to change the procedure so that the notice of cancellation informs the customer that his overdraft privileges are no longer available and that if the unpaid balance is not paid within a specified number of days, the bank will cancel the plan and convert as provided for in the master agreement. Thus, consummation will not have occurred at the time of sending the cancellation notice because the customer will not be bound to the terms of the conversion plan until he makes his decision of whether to pay the unpaid balance in full. If, after the specified number of days, the unpaid balance has not been paid, the bank could exercise the conversion option and would at that time have the information needed to make its Truth in Lending disclosures.

Excerpts from FRB Letter of August 6, 1976, No. 1093, by Jerauld C. Kluckman, Assistant Director.

NUMBER 111

The only answer that we are able to give you is, in itself, a question. Section 226.9(a) states that a customer shall have the right to rescind a transaction if 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.

If, in the State of California, the installation of wall-to-wall carpet would create such a security interest then the transaction is clearly under the provisions of Regulation Z.

Excerpts from FRB Letter of June 25, 1969, by Robert P. Forrestal, Assistant Secretary.

NUMBER 112

We are pleased to respond to your recent letter in which you asked for our comments concerning the release dated September 9, 1969, prepared by the *** regarding the right of rescission under the Truth in Lending Act and Regulation Z.

The release indicates that a consumer may purchase on credit any built-in appliance, have it delivered to his home, exercise the three-day right of rescission provided in Regulation Z, and then leave his house for several weeks. Supposedly, the result of this action is to have allowed the customer to be able to retain the built-in appliance free of charge.

The right of rescission is provided in § 125 of the Truth in Lending Act and is designed to provide a customer with a three-day "cooling-off" period to think it over before he takes such a serious step as pledging his residence as security for a credit transaction. The exemption to this provision is that it does not apply to first liens against a dwelling, when the purpose of the transaction giving rise to the lien is to finance the acquisition of that dwelling.

However, the purchase on credit of a built-in appliance usually gives rise to a mechanic's or materialman's lien on the customer's residence. These types of liens held by legitimate creditors can result in a customer losing his residence just as well as through liens held by "shady" dealers. These liens are subject to the right of rescission.

We do not believe that the right of rescission can be misused as easily as stated in the release. If a customer has rescinded a credit transaction, § 226.9(d) of Regulation Z which is taken from § 125(b) of the Truth in Lending Act, provides that he 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. ... If the creditor does not take possession of the property within ten days after tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it." This section of the Regulation provides that the customer must take some affirmative action to tender the property to the creditor. We doubt that locking the property in his house and going away fishing could be constituted as tendering the property within the provisions of State law or Regulation Z.

The Regulation does not provide that a creditor must deliver such property to the customer before he has evidence that the customer has not exercised his right of rescission. If the creditor so desires, he may withhold delivery until such time that he is sure that the right of rescission has not been exercised. In fact, when the three-day period has elapsed, the creditor may want to have the customer state in writing that he has not exercised his right of rescission. In any event, § 226.9(c) of Regulation Z prohibits the creditor from installing any such built-in appliances until the rescission period has expired and the creditor has reasonably satisfied himself that the customer has not rescinded the transaction.

Excerpts from FRB Letter of October 31, 1969, by J. L. Robertson.

NUMBER 113

This will acknowledge receipt of your letter of July 3, 1969, in which you posed several questions concerning the confession of judgment clause in existing customer contracts under your "Cash Plus" plan.

As you are probably aware, the Board has promulgated an interpretation regarding confession of judgment. This interpretation (is) Section 226.202. We are informed that under this interpretation, confession of judgment constitutes a security interest in the State of Pennsylvania.

As you recognize in your letter, Regulation Z does not prohibit the use of confessions of judgment; therefore, whether you retain them is a matter of policy which only your management can exercise. It is our position that, irrespective of whether the judgment has been exercised, when an open end account contract contains a security interest in any real estate which is used or expected to be used as the principal residence of the customer, each transaction under that account is subject to the rescission provisions of Section 226.9 of Regulation Z. Therefore, if the confession of judgment clause is retained in your loan documents, it will be necessary to grant the customer the right of rescission with cash loan advance under "Cash Plus" plan.

An alternative may be to eliminate the confession of judgment clause from the loan documents. Another alternative which you may want to consider would be the waiver of security interests, as described in Section 226.901.

Excerpts from FRB Letter of September 17, 1969, No. 118, by Robert P. Forrestal, Assistant Secretary.

NUMBER 114

This (concerns) questions pertaining to the application of the right of rescission under Regulation Z to credit transactions involving mobile homes. Specifically, you question whether the right of rescission would be applicable on the following consumer credit transactions in which a security interest is taken in a mobile home:

1. Where the mobile home is purchased and is to be placed in a mobile home park, not owned by the purchaser.

2. Where a mobile home is purchased and is to be placed on property under a long-term lease to the purchaser.

3. Where a mobile home is purchased and is to be placed on property owned by the purchaser.

A primary consideration is whether the mobile home in which the creditor has a security interest represents "real property which is used or expected to be used as a principal residence of the customer." (See § 226.9(a)). Regulation Z (§ 226.2(w)) defines real property as "property which is real property under the law of the State in which it is to be located." Consequently, if a mobile home is considered to be real property under the law of the State in which it is to be located, the right of rescission would be applicable, but *only* if the security interest is other than "a first lien or an equivalent security interest to finance the acquisition of the dwelling in which the customer resides or expects to reside." If the only security interest in a mobile home to finance its acquisiton, such a transaction would be exempt from the right of rescission as provided in § 226.9(g)(1). This would be applicable in all three situations listed above.

In the third situation, if the security interest also covers the land owned by the purchaser on which the mobile home is to be located, the right of rescission may be applicable, depending upon the type of security interest. If the security interest given by the purchaser is a "first lien or equivalent security interest," the right of rescission would not be applicable. On the other hand, if a security interest already exists in the land, the security interest arising from the purchase of a mobile home would not be a "first lien or equivalent security interest," and, therefore, the right of rescission would be applicable.

Excerpts from FRB Letter of February 23, 1972, No. 578, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 115

This is in response to your letter *** regarding the relationship between the rights provided by the Federal Trade Commission's Trade Regulation Rule on door-to-door sales (16 C.F.R. 429) and the Board's Regulation Z § 226.9.

Under the Commission's Trade Regulation Rule a seller engaged in door-to-door sales must provide customers with a notice of the right of cancellation of the transaction. Section 226.9 of Regulation Z, implementing the Truth in Lending Act, requires creditors in consumer interest in the customer's principal residence to provide customers with a notice of the right of rescission. You indicate that certain sellers engaged in the door-to-door sale of retail home improvements products may inadvertently provide customers with the wrong notice because of confusion over which section applies, and you further suggest that formulation of a single uniform notice covering both these rights could alleviate this confusion.

In staff's opinion, such a solution would be both unnecessary and inappropriate. While we can understand your desire to protect your clients from unnecessary liability, we do not believe that § 226.9 of Regulation Z imposes any greater burdens on creditors engaged in door-to-door sales than on any other type of creditor. Initially, it might be noted that the rights provided by these two regulations are mutually exclusive in that, pursuant to § 429.1(a)(2) of the Commission's rule, any transaction to which the provisions of § 226.9 of Regulation Z apply would not be subject to that rule. If a creditor is required by Regulation Z to provide a customer with a notice of the right of rescission, that creditor need not provide the notice of the right of cancellation under the Commission's rule. Any creditor subject to the provisions of the Truth in Lending Act must determine, in every consumer credit transaction the applicability of the right of rescission under Regulation Z, whether that transaction is consummated at the customer's home or at any other location. Once this determination is made, the creditor's responsibilities under § 226.9 are clear. If the creditor provides the notice of the right of rescission as required, the creditor would not be engaged in a "door-to-door sale" as that term is defined in the Commission's rule and, therefore, need not concern itself with the provisions of that rule.

The provision of a separate notice in transactions involving a security interest in the customer's home also serves the important purpose of emphasizing to the consumer the potential effect of the transaction into which he has entered. Besides informing the customer of his important right of rescission under the Act, the notice may also make the customer more fully aware that his own home will be used as security. This awareness may encourage the consumer to examine more closely the terms of the transaction and thus to consider his rights in a more informed manner. We believe that this purpose is best served by providing the customer with a separate statement of his right, set apart from any other disclosure required by the Act and other rules and regulations.

Excerpts from FRB Letter of June 1, 1976, No. 1054, by Jerauld C. Kluckman, Assistant Director.

NUMBER 116

This is in response to your letter *** regarding the effect of a customer's exercise of the right of rescission on your client's responsibilities under § 226.9 of Regulation Z.

In your letter, you expressed concern over the need to refund to the rescinding customer those amounts paid for an appraisal and a credit report, and you asked whether such refunds could be avoided in the future.

One primary purpose of the right of rescission is to place the parties to the transaction, as much as possible, in the positions they occupied before entering into the transaction. For this reason, § 226.9(d) of the Regulation states that a customer electing to rescind is not liable for "any finance or other charge." Among these other charges are the items listed in § 226.4(e) of the Regulation, which provides for the exclusion from the finance charge of certain charges such as appraisal fees or credit report fees imposed in connection with realty transactions. Thus, if the customer pays such fees and subsequently rescinds the transaction, the lender could not properly retain those amounts without violating the Regulation. The fees paid by the customer must be returned to him pursuant to § 226.9(d).

Excerpts from FRB Letter of July 13, 1976, No. 1078 by Jerauld C. Kluckman, Assistant Director.

NUMBER 117

You refer to the problem of advertising credit under section 226.10(d) *Advertising of credit other than open end* when certain specific credit terms cannot be determined in advance of the actual transaction. Specifically, this arises in the case of the sale of heating, air conditioning, and water heating equipment where the total sale price and the down payment varies with each sale since most of the equipment is tailored for a particular installation, and installation charges are also financed.

In such case, where the sale price is indefinite and could fluctuate to a considerable degree, it would be appropriate to base your advertising on a hypothetical example, provided, of course, that it accurately reflected the terms of a typical transactions. In choosing an example I suggest that you choose one which clearly corresponds to the most common size of transaction being solicited.

Excerpts from FRB Letter of April 2, 1969, by Griffith L. Garwood, Attorney.

NUMBER 118

This is in reference to your letter of November 14, 1969 raising certain questions regarding the advertising provisions of Regulation Z.

In our opinion the phrase "you may defer your first monthly installment until February" may be used in connection with advertising credit other than open end without triggering the disclosure requirements of § 226.10(d)(2) since it refers to "installment" payments in general. Conversely, the phrase "you may defer your first payment until February" would require you to state the additional terms in § 226.10(d)(2) since by implication you have stated that no down payment is required.

Furthermore, it is our opinion that the phrase "charge it on your account—it will not be billed to your account until February" in connection with open end credit would not require a creditor to set forth all of the terms in § 226.10(c).

Excerpts from FRB Letter of November 28, 1969 by Frederic Solomon, Director.

NUMBER 118

This is in reference to your letter of November 4, 1969 raising certain questions regarding the advertising provisions of Regulation Z.

In our opinion the phrase "you may defer your first monthly installment until February" may be used in connection with advertising credit other than open end without triggering the disclosure requirements of § 226.10(d)(2) since it refers to "installment" payments in general. Conversely, the phrase "you may defer your first payment until February" would require you to state the additional terms in § 226.10(d)(2) since by implication you have stated that no down payment is required.

Furthermore, it is our opinion that the phrase "charge it on your account—it will not be billed to your account until February" in connection with open end credit would not require a creditor to set forth all of the terms in § 226.10(c).

Excerpts from FRB Letter of November 28, 1969 by Frederic Solomon, Director.

NUMBER 119

Since the July 1 effective date of the Truth in Lending Act, advertisers of consumer credit have been required to disclose all relevant terms of their credit extensions if they advertise any one specific credit term, such as down payment required, the amount of any installment payment or the dollar amount of finance charge.

Because of a seeming reluctance to disclose such terms, especially the annual percentage rate, some advertisers of consumer credit have abandoned entirely the use of specific credit terms and have begun using general credit advertising. While this avoids the requirements of the Truth in Lending Act, it does raise the question of compliance with Section Five of the Federal Trade Commission Act.

Advertising terms such as "easy credit," "easy credit terms," "liberal terms," "easy pay plan" and other similar phrases are appearing with such frequency that the Federal Trade Commission feels it is important to define such terms and to set up standards for their use for those vendors and lenders who may offer such credit.

When used, these terms relate to credit worthiness as well as to the terms of sale and credit repayment.

The terms should mean that:

1. Consumer credit is extended without determining the debtor's financial ability to pay or his credit rating; or

Consumer credit is extended to persons whose ability to pay or credit rating is below typical standards of credit-worthiness;

2. The prices charged for the goods do not exceed the prices charged for like or similar merchandise by other retail establishments in the same trade area whether sold on credit or for cash;

3. The finance charges and annual percentage rate do not exceed those charged to persons whose credit rating has been determined and who meet generally accepted standards of credit-worthiness;

4. The down payment is as low and the period of repayment of the same duration as in consumer credit extensions to those of previously determined creditworthiness; and

5. The debtor is dealt with fairly on all conditions of the transaction including the consequences of a delayed or missed payment.

It is essential when evaluating "easy credit" and similar representations to consider the impact on the consumers to whom they are directed. Such customers are drawn largely from low-income markets where purchasing sophistication and know-how may not be well developed, and where persons generally must purchase goods with a kind of credit that is often high risk and high rate.

The Commission recognizes that there is a basic conflict between high-risk credit and low cost credit; yet it appears that "easy credit" advertises just that, a set of conditions which the retail credit community may not be able or willing to grant.

It therefore appears to the Commission that such representations to the consuming public, if false, may constitute a deceptive practice in violation of Section 5 of the Federal Trade Commission Act. Grantors of consumer credit are urged to reexamine their credit practices in the light of this policy statement and amend their advertising and their procedures accordingly.

FTC Consumer Credit Policy Statement Number One, October 13, 1969.

NUMBER 120

This reply is in response to your request for an advisory opinion in regard to the use of the proposed phrase, "Leave your pocketbook at home," in the light of the requirements of the Truth in Lending Act and Regulation Z.

According to the Commission's understanding of the facts, your client, Daumit Stores, Inc. of St. Louis, Missouri, operates a retail clothing store where sales are made on an installment sales contract basis, i.e., closed end credit.

It is your position that the proposed phrase is not "equivalent to no down payment but merely advises the customer that he need not have any money with him when he comes in to the store." You further state that the customer "may make and often does the first payment, whether it is a down payment, or not, at some future time which is usually his next payday." Finally, we are advised:

"The customer may take the clothing with him at the time the purchase is made rather than wait until the first payment has been made. In ninety-nine out of a hundred cases, the purchaser does take the clothing with him at the time the purchase is made.

The Commission has given careful consideration to your request. It has concluded that the proposed phrase is equivalent to, or synonymous with, a "no down payment" claim. Under these circumstances, therefore, it is concluded that it would be improper to use the proposed phrase without disclosing the specific credit terms required by Sec. 226.10(d)(2) of Regulation Z. Specifically, the advertising must disclose the following credit information whenever a no down payment claim is made:

1. the cash price,

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

3. the annual percentage rate, and

4. the deferred payment price of the article offered for sale.

By direction of the Commission.

Federal Trade Commission Advisory Opinion, Requesting Party—Daumit Stores, Inc. File No. 703 7082, Released April 13, 1970.

NUMBER 121

*** has questioned the practice of advertising terms such as "no payment 'til March" without specifically stating that the finance charge will begin to accrue during the period between purchase and first payment.

While it may be argued that the advertisement should make it clear that a finance charge is applicable to this period, neither the Act nor Regulation Z require this specific item to be shown. Nevertheless I understand that the staff of the Federal Trade Commission may be concerned about this practice under its general regulatory authority.

Statements such as "no payment 'til March" would, however, require a creditor offering other than open end credit to give the additional terms in the advertisement specified in § 226.10(d). On the other hand, it has been our position that in connection with open end credit the statement is equivalent to saying "charge it—your purchase will not be billed until March" and would not trigger advertising provisions under § 226.10(c).

Excerpts from FRB Letter of April 16, 1970, by Griffith L. Garwood, Attorney.

NUMBER 122

You enclosed a proposed form of a hang tag to be used by retailers who advertise credit terms by attaching such tags to articles of merchandise on display. Specifically, the proposed tag would state clearly and conspicuously along with other information required under § 226.10(d) of Regulation Z.

(On the Face)
STOREX
Description of Article
No downpayment on a Store X Club Plan
_____ Months to Pay
Only $_____ a month for _____ months
Plus one final monthly payment of $_____
See Reverse Side For Further Terms & Conditions
(On Reverse Side)
Cash Price $_____
Deferred Payment Price $_____
ANNUAL PERCENTAGE RATE OF FINANCE CHARGE _____%

In our opinion, the proposed form of hang tag setting forth the information required under § 226.10(d) of Regulation Z as set forth above would comply with requirements *provided* that both sides of the tag bear a clear and conspicuous reference to the reverse side for further terms and conditions. As the tag was submitted to us, only one side bore that legend.

We should emphasize that such a tag may be used only as a hang tag on floor merchandise where customers have access to both sides. It should not be used on window displays or in any other manner where both sides cannot be examined by the customer.

Excerpts from FRB Letter of May 1, 1970, by Milton W. Schober, Assistant Director.

NUMBER 123

We have generally taken the position with respect to the *disclosure* of add-on rates that they do, in fact, tend to "mislead or confuse the customer or contradict, obscure, or detract attention from the information required ... to be disclosed." Of course, if disclosure is required by State law, the add-on rate may be disclosed so long as the provisions of Section 226.6(c) are met. We have also taken the position that the information which confuses or obscures for disclosure purposes has the same effect in advertising. For this reason, we have done everything possible to discourage the advertisement of an add-on rate. While I agree that the advertisement which you submitted does not appear offensive I would nonetheless be inclined to take the position that, generally, the advertising of an add-on rate is not permissible.

Excerpts from FRB Letter of February 12, 1970, No. 255, by Milton W. Schober, Assistant Director.

NUMBER 124

You state that your client prepares literature for direct mail promotion of the sale of certain products. Each mailing is a separate and distinct offer of a particular item of merchandise. The promotional material typically consists of several pieces, which are put together in the form of a letter and enclosures in a regular mailing envelope. The contents of the envelope usually are:

(a) a promotional letter

(b) a color brochure showing and describing the product, setting forth any warranty, etc.

(c) an order card, either self-mailing or accompanied by a return envelope and

(d) disclosures meeting both the requirements of § 226.8 and § 226.10 which may be a separate statement or attached to the letter or order card.

You question whether the contents of the single envelope can be considered a single "multi-page advertisement" within the meaning of § 22.10(b). If so, any statement of credit terms on the color brochure or other individual pieces (for example the monthly payment) could be given by itself although accompanied by a reference to the full set of disclosures.

Section 226.10(b) provides that a catalog or multi-page advertisement may be considered a single advertisement provided it has a "table or schedule of credit terms" and that "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." The multi-page advertisements to which that section refers are advertisements consisting of a paginated series of pages, for example, a supplement to a newspaper. This is consistent with the general definition of a page as being one of a series of leaves of a printed or written work.

Consequently, it is our opinion that several pieces of promotional literature like those to which you refer, although sent in the same envelope, do not constitute a single "multi-page advertisement" for purposes of § 226.10(b). However, we are also of the opinion that this type of mailing could be made to comply under § 226.10(d) by setting forth the information required under that paragraph on each piece of promotional material at the place where any credit term is stated which triggers the requirements of § 226.10(d).

Excerpts from FRB Letter of June 26, 1970, No. 365, by Brenton C. Leavitt, Deputy Director.

NUMBER 125

The Federal Trade Commission is charged with enforcement of the Truth in Lending Act and its implementing Regulation Z with respect to retail and department stores, consumer finance companies, and all other creditors not regulated by another federal agency.

The staff has handled thousands of inquiries, complaints, and requests for informal advisory opinions and interpretations since the July 1, 1969 effective date of the Act and Regulation Z. It has been the experience of the staff that the great majority of creditors are willing, and have made bona fide attempts, to comply with the new law. One area within the Commission's jurisdiction that persistently reflects problems of compliance is direct-mail advertisements. Therefore, the staff has drawn guidelines applicable to such advertisements that contain credit terms. These guides represent staff advice and are not binding upon the Commission in any matter which it may decide.

I. GENERAL RULES

Generally, the disclosure requirements of Regulation Z concerning advertising (§ 226.10) must be complied with whenever an advertisement to aid, promote or assist, directly or indirectly an extension of consumer credit sets forth a specific credit term. Consumer credit is defined by Regulation Z as "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 four installments." (§ 226.2(k))

It is therefore important to note at the outset that some advertisements come within the purview of Regulation Z because the advertised transactions include provision for repayment of the obligation in more than four installments. Whenever this is the situation (a separately identifiable finance charge is not imposed for the extension of credit), and a triggering credit term appears, the disclosures in the advertisement need not include a zero annual percentage rate. This term may be absent under these circumstances. However, even though the cash price and deferred payment price may be identical amounts, both of these terms must be disclosed, though one numerical figure may be representative of both terms. An illustration of this situation is, "Cash Price (and Deferred Payment Price) is $120.00"

A full disclosure statement, including the amount or rate(s) of sales tax applicable to the credit transaction, must be furnished to the customer prior to consummation of the transaction. The time of consummation is determined according to state contract law.

Disclosures that are required in advertisements may not necessarily meet the disclosure requirements of § 226.7 (open end credit) or § 226.8 (installment sales and loans). For example, identification of the method of computing any unearned finance charge in the event of prepayment must be indicated in a point-of-sale disclosure statement pursuant to § 226.8, but this is not required in advertising disclosures.

II. ANNUAL PERCENTAGE RATE IN ADVERTISING

The term "Annual Percentage Rate" should be spelled out and not reduced to "APR" or otherwise abbreviated. Further, since § 226.6(a) of Regulation Z provides that whenever this term is set forth it must be printed more conspicuously than other required terminology, advertisers should make this term more predominant than other required terms in their advertisements.

An advertisement for closed end credit (pursuant to § 226.8) can set forth the finance charge expressed as an "Annual Percentage Rate" *without disclosure of any other credit terms*. The advertising provisions of the Truth in Lending Act and Regulation Z are intended to encourage the use of the "Annual Percentage Rate" by advertisers; thus the exemption from disclosing the other terms specified in § 226.10(d)(2).

III. OPEN END CREDIT DISTINGUISHED FROM CLOSED END CREDIT

The disclosure requirem ts for advertisements of open end credit differ from those for closed end cred An advertiser of consumer credit, as "consumer credit" is defined by Regu tion Z, should consult §§ 226.10(c) of Regulation Z. The use of a specific credi erm, such as "No Downpayment" or "Pay $10 per month," must be accomp ied by disclosures required by that Section. Under these circumstances, genera reference to terms of the open end credit plan will not suffice. That is, langua such as "on your credit card account," following one specific credit term or one specific aspect of the credit plan, does not alleviate the necessity to state e requisite disclosures pursuant to § 226.10(c).

In the event an advertisement for closed end credit contains a specific credit term which triggers the full disclosure requirements of § 226.10(d)(2), the advertising disclosures must be stated in the terminology prescribed under § 226.8. Similarly, if the disclosure requirement for open end credit advertising are triggered, the terminology utilized should be inconformity with § 226.7.

IV. DIRECT-MAIL ADVERTISEMENTS

Each separate specimen of advertising literature stating a specific credit term must comply with the disclosure, requirement applicable thereto. The practice of some direct-mail advertisers of including one disclosure statement with several separate and different promotional materials will not exempt the other materials from disclosure provisions of Regulation Z, even if all are mailed in the same envelope.

The special provision in the Regulation regarding multi-page advertisements (§ 226.10(b)(2)) applies to each specimen of multi-page advertising copy. When a schedule or table appears in the multi-page advertisement and a credit term appears in a different portion of that same specimen, a reference to the table or schedule must *accompany* that specific credit term. This alleviates the necessity of restating the full disclosure requirements each time a credit term is used in a catalog or other multi-page advertisement. However, a credit disclosure statement at the bottom of the page will not meet the requirement that the reference must accompany the specific triggering term.

V. ILLUSTRATIVE DISCLOSURE FOR ADVERTISEMENTS

1. Proper advertising disclosure, under § 226.10(d)(2), for a closed end credit transaction *where no finance charge is imposed* and payment is to be made in more than four installments:

"Cash Price $40.00; no downpayment; ten Monthly Payments of $4.00 each Deferred Payment Price $40.00"

or

"Cash Price (and Deferred Payment Price) $40.00; no downpayment; ten Monthly Payments of $4.00 each"

2. Proper advertising disclosure, under § 226.10(d)(2) for a closed-end credit transaction where a finance charge is imposed:

"Cash Price $100.00 No Downpayment 12 montly installments of $10.00 each ANNUAL PERCENTAGE RATE: 35% Deferred Payment Price $120.00"

3. Proper Advertising disclosure for an open-end credit account, pursuant to § 226.10(c):

"NO FINANCE CHARGE when payment is received within 30 days from the closing date shown on your monthly billing statement. If any purchase remains unpaid for 30 days from the closing date shown on the monthly billing statement, a FINANCE CHARGE at the periodic rate of 1½% per month of the [total past due balance] [previous balance is without regard to current payments and credits] shall be imposed. This is an ANNUAL PERCENTAGE RATE of 18%. The minimum monthly payment is $10.00"

4. Permissible disclosure, under § 226.10(b), in a catalog or other multi-page advertisement so long as full disclosure of credit terms is made clearly and conspicuously in another portion of the same catalog or multi-page advertisement:

"Only $4.00 per month, SEE PAGE 38 FOR FULL DISCLOSURE OF CREDIT TERMS"

VI. USE OF GENERAL AND SPECIFIC CREDIT TERMS

A. *General Terms* (Requiring no other disclosures)

OPEN END CREDIT

1. "Charge accounts available"
2. "Open a revolving budget account"
3. "Just say charge it"
4. "Shopping dollars go further when you use branch x charge-all charge cards"
5. "Open your all-purpose charge account and just say charge it"
6. "All major credit cards honored"
7. "X charge card honored
8. "Use our convenient charge plan"
9. "Put all your purchases on a 30 day no carrying charge account"
10. "Your first installment [do not use 'payment' unless you state '*monthly* payment'] begins in June"

CLOSED END CREDIT

1. "18% Annual Percentage Rate"
2. "Low, low financing"; "Liberal budget terms"
3. "Bank financing available"
4. "Financing by XYZ Bank"
5. "Terms arranged"
6. "Store financing"
7. "On the spot financing"

8. "Easy monthly payments"
9. "Convenient credit can be arranged"
10. "Financing available"
11. "Terms to fit your budget"
12. "Arrange low terms for instant credit"
13. "Low Downpayment accepted"
14. "90 days (three payments) same as cash"
15. "No finance charges if paid in four installments"

B. *Specific Terms*

OPEN END CREDIT (Requiring full disclosure pursuant to § 226.10(c))

1. "No downpayment"
2. "You don't need cash"; "Leave your pocketbook at home"
3. "$50 down"
4. "Pay $9 a month"; "Up to $50 monthly"
5. "18% financing"
6. "Less than 2% per month"
7. "Minimum payment $10"

CLOSED END CREDIT (Requiring full disclosure pursuant to § 226.10(d)(2))

1. "$50 Down"
2. "No money down"
3. "Non downpayment"
4. "$9 a month"
5. "$5 per week"
6. "20 installments of $10 each"
7. "Finance for under $100"
8. "$5 financing"
9. "Less than $100 interest"
10. "30 equal payments"
11. "36 months to pay"
12. "No charge for credit"
13. "no cash needed"
14. "100% financing available"
15. "Nothing to pay until June"
16. "No payment until August"

VII. DEFERRED PAYMENT PLAN ADVERTISEMENTS

Many creditors offer and advertise plans whereby customers may purchase items on credit and defer the first regular ("monthly" or "installment") payment for a number of months from the date or purchase. Two requirements are particularly applicable to this kind of advertisement.

First, unless all credit terms required to be disclosed by § 226.10(c) (open end credit) *or* § 226.10(d)(2) (other than open end credit), as applicable, are set forth, the advertisement must clearly refer to the "monthly" or "installment" payment as that payment which may be deferred. (For example, "No installment payments until June"). To state otherwise (for example, "No payment until June") would constitute a direct or implied representation that "no downpayment" is required, without stating all other credit terms which must be disclosed pursuant to either §§ 226.10(c) or (d)(2).

Second, if the finance charge begins to run before the date of the first scheduled regular ("monthly" or "installment") payment, and:

(1) The customer will be required to pay finance charges before the date of the first regular payment; *or*

(2) The customer will incur any finance charges during the period of deferment; *or*

(3) The customer will pay a total price ("deferred payment price" in other than open end transactions) which is greater than, or at an annual percentage rate which is higher than, the price or rate he would pay if he did not choose to defer the first regular payment, but chose to pay in equal installments over a period of time equal to that offered under the deferred payment plan;

then, these facts, as applicable, should be disclosed clearly in the advertisement, so that customers reading the advertisement will not be misled into believing that there is no increase in cost to him for choosing to defer the first regular payment, or misled as to the "deferred" features of the plan.

In summary, if finance charges and other costs are in any way increased due to deferment of the first regular payment rather than choosing to pay in equal installments over a period of time equal to that offered under the deferred payment plan, or if finance charges are required to be paid before or are accumulated and to be paid at the time of the first regular payment, such facts should be disclosed in the advertisement. For example, if the deferred purchase is placed on an open end credit account with finance charges imposed on the amount of the purchase during the period when no *payment* is required on that particular purchase, that fact should be clearly disclosed in the advertisement.

The staff interpretation as to this second requirement is based upon the prohibition in Section 5 of the Federal Trade Commission Act against unfair or deceptive acts or practices in commerce.

FTC Staff Guidelines for Direct-Mail Consumer Credit Advertisements and Staff Guide-lines for Advertising of Consumer Credit, Spring 1970.

NUMBER 126

[You question] whether certain information placed on a customer's checking account statement would be classified as an advertisement under Regulation Z.

The definition of advertisement, as stated in § 226.2(b) of Regulation Z, is quite broad in that it includes any commercial message. This definition, combined with the provisions of § 226.10 dealing with the advertising of credit terms, basically places any message to aid, promote, or assist directly or indirectly any extension of consumer credit as an advertisement coming within the scope of the Regulation. Consequently, we believe that any message promoting consumer credit placed on the bank statement would be an advertisement subject to the Regulation.

We believe that continued use of the "add-on" or "discount" rate in place of, or in conjunction with, the annual percentage rate, merely tends to perpetuate the confusion which Truth in Lending was intended to cure. Consequently, we have taken the position that the use of the "add-on" or "discount" rates is not permissible.

It would be permissible under the Regulation to place the statement "Get an auto loan for 9.25 Annual Percentage Rate" on the checking account statement. Section 226.10(d) of Regulation Z permits a creditor to advertise the annual percentage rate alone without including the other credit terms, in credit plans that are other than open end.

Excerpts from FRB Letter of October 22, 1971, No. 534, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 127

In the absence of Mr. Kluckman, I am responding to your letter of September 12, requesting an opinion as to the requirements of § 226.10 of Regulation Z with respect to the advertising of bank package accounts which include free checking accounts, overdraft protection, safety deposit boxes, travelers checks, savings accounts, and credit cards. In addition, the bank offers reduced rates on personal loans, with a typical advertisement reading:

> "REDUCED INTEREST RATES ON PERSONAL LOANS. You'll get a special discount on the cost of borrowing money, when you qualify for a personal loan ($1,000 or more—three years maximum term). This includes loans for cars, boats, and other types of personal loans."

It is staff's opinion that the term "reduced interest rates" does not trigger any disclosure requirements under § 226.10(d)(2) (see Public Information Letter No. 805). On the other hand, the term "three years maximum term" would trigger the disclosure requirements of § 226.10(d)(2) as referring "to the period of repayment."

You question whether the latter term should come within the parameters of § 226.10(d)(2), since the purpose of using the term is not to aid the making of the loan but rather to limit the loan and avoid confusion on the part of the customer. It is staff's opinion that the advertisement taken as a whole is designed to aid, promote, or assist directly or indirectly an extension of credit; therefore, the disclosure requirements relating to advertising of credit other than open end must be followed. If you believe that eliminating the term "three year maximum" would lead to confusion, then we suggest that you keep that term in the advertisement and make the additional disclosures required by § 226.10(d).

Excerpts from FRB Letter of September 24, 1974, No. 844, by D. Edwin Schmelzer, Attorney, Truth in Lending Section.

NUMBER 128

This is in response to your letter *** relating to a proposed amendment § 226.10(f) of Regulation Z, which implements § 146 of the Truth in Lending Act. First, you ask whether a creditor may advertise free credit without any reference to the length of the terms or the number of installments and thereby avoid having to include the quoted language in § 146. In addition, you ask whether the creditor must include the quoted language in § 146 when advertising credt payable in more than four installments, even though there may be no identifiable finance charge imposed.

It is staff's opinion that a creditor may not advertise free credit and omit any reference to the length of the terms or the number of installments to avoid the requirements of § 146, which requires a creditor to state: "The cost of credit is included in the price quoted for the goods and services." A reference in the advertisement to credit in connection with a transaction payable in more than four installments without an identifiable finance charge would trigger requirements of § 146 and the proposed § 226.10(f) of Regulation Z.

In response to your second question, I would refer you to § 226.2(k), which defines "consumer credit" as a transaction in which a finance charge is or may be imposed or which, pursuant to an agreement, is or may be payable in more than four installments. In conjunction with the more than four installment rule, Congress amended the advertising provisions of the Truth in Lending Act to require creditors who impose no identifiable finance charge but allow payment in more than four installments to disclose clearly and conspicuously in their advertising that the cost of credit is included in the price of the item being sold. Because the Truth in Lending Act defines any transaction payable in more than four installments as a consumer credit transaction, the absence of any *identifiable* finance charge in such an installment transaction is irrelevant for purposes of defining consumer credit in Regulation Z. This reasoning also applies to § 146 of the Act.

Excerpts from FRB Letter of March 12, 1975, No. 879, by Jerauld C. Kluckman, Chief, Fair Credit Practices Section.

NUMBER 129

This is in response to your letter *** requesting staff's opinion on the applicability of § 226.10(c) of Regulation Z to an advertisement for an open end credit plan.

Your client, a bank which offers an overdraft checking plan, proposes to publish an advertisement which will state in part:

"How much will check credit cost? Nothing, if you never need it. But when you do, the charge is based on *** usual low loan rates."

You wish to know whether this language would constitute a statement of the conditions under which a finance charge may be imposed, triggering the disclosure of the additional terms required by § 226.10(c).

In staff's opinion, a statement that the charge will be based on the bank's "usual low loan rates" if the credit plan is used does not state the conditions for imposition of a finance charge, within the meaning of § 226.7(a)(1). We believe that this language may be distinguished from the advertisement discussed in Public Information Letter 154, dated October 16, 1969, where staff indicated that the phrase "small monthly service charge on the remaining balance" might trigger the advertising provisions by virtue of § 226.7(a)(1). In that case, it could be inferred from the advertisement that a finance charge would be imposed on the unpaid balance each month. We do not believe that any such inference as to the conditions for imposing a finance charge can be drawn from your client's proposed advertisement. Nor can the general reference to the bank's "usual low loan rates," in our opinion, be considered a statement of the periodic rate or of the method of determining the finance charge, either of which would require the additional disclosures set forth in § 226.10(c). Thus, is it staff's opinion that the quoted language from the bank's advertisement does not trigger the advertising provisions of the Regulation.

Excerpts from FRB Letter of January 23, 1976, No. 992, by Jerauld C. Kluckman, Assistant Director.

NUMBER 130

This is in reply to your letter *** in which you asked for our opinion as to whether a certain fold-over brochure (enclosed in your letter) describing credit plans offered by a bank complies with § 226.10(d) of Regulation Z.

The brochure in question outlines several types of credit plans which a customer may apply for. Your concern is that, with regard to several of the plans, the brochure gives the customer a choice of repayment periods in the following manner ... "Number of years to repay (1-3) yrs" (with the space provided to allow the customer to choose the period desired). You feel this may be a triggering term under § 226.10(d).

The first question which must be addressed is whether these offers of the various credit plans with the available time limits for repayment listed appear on parts of the brochure which can be considered advertisements under Regulation Z. In Public Information Letter 303 a similar type of fold-over brochure was under consideration. Part of that brochure constituted an advertisement, staff said, mainly because it contained "commercial messages." However, a portion of the brochure contained on the same piece of paper but on a different "fold-over" portion was viewed by staff as an application rather than an advertisement. The application form under consideration in Letter 303 allowed the customer applicant to check one of several boxes to indicate their choice as to the repayment period and as to when they wished the first payment to be due. In that case, no commercial messages appeared on the application portion of the form and no triggering terms appeared on the advertisement portion of the form. Therefore, staff stated that the creditors obligation to make all disclosures under § 226.10 was not triggered.

However, in staff's view this is not the case regarding the brochure you sent to us. Matters which could be considered "commercial messages" appear interspersed among the portions of the brochure which might otherwise be considered to be merely an application. Therefore, it is staff's opinion that the portion of the brochure which contains the material quoted above constitutes an advertisement of credit terms.

Furthermore, it appears to our staff that the advertisement as described above set out a period for repayment of the loans being advertised. Some of the loans have different periods for repayment then the one shown in the example above, but they all fit that general description. Accordingly, it is staff's view that the bank's obligation to make full disclosure under § 226.10(d) is triggered by the inclusion of the period for repayment. Since full disclosures of all the required terms are not made in this advertisement, it is staff's view that this advertisement is not in compliance with the provisions of § 226.10(d) of Regulation Z.

Excerpts from FRB Letter of June 3, 1976, No. 1061, by Jerauld C. Kluckman, Assistant Director.

NUMBER 131

This is in response to your letter of December 24, 1970, concerning the recent amendments to the Truth in Lending Act dealing with credit cards, and the implementing regulations in § 226.13 of Regulation Z. Your question is whether *** can issue unsolicited credit cards to existing or former coupon book customers, and to existing customers under the big ticket or "budget installment" type of account. These plans would be replaced by revolving charge accounts using the cards.

Section 226.13(a)(6) defines the term "credit card" to be a "card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit." Section 226.13(b)(2) allows card issuers to issue credit cards "in substitution for" accepted credit cards. The question is how these provisions apply to the possible modifications in the credit operation.

Initially, it is quite clear that *** cannot issue unsolicited credit cards to be used in connection with its revolving charge accounts to existing customers under the "budget installment" type of account. As we understand it, the "budget installment" account is essentialy a closed end credit contract and does not employ any device which could meet the definition of "credit card." Furthermore, it seems to us that the same result applies to the issuance of credit cards which replace the coupon book plan. Certainly, this would be so with regard to previous coupon book customers who have used their coupons and no longer have a coupon account. Furthermore, since those presently holding coupon books could continue to use their remaining coupons even after a card is issued, it does not appear to us that the card would actually be "in substitution" for the coupons.

Excerpts from FRB Letter of February 9, 1971, No. 439, by Griffith L. Garwood, Attorney.

NUMBER 132

This is in response to your letter *** concerning the recent amendments to Regulation Z relating to credit cards—§ 226.13. Your question is whether the $50 limit on liability for unauthorized use applies to each unauthorized use or several unauthorized uses on a continuing basis. It is our view that § 226.13(c) limits liability for unauthorized use to $50 irrespective of the number of times the card is used in an unauthorized manner.

Excerpts from FRB Letter of March 1, 1971, No. 445, by Griffith L. Garwood, Attorney.

NUMBER 133

This is in response to your letter *** concerning the recent amendments to Regulation Z dealing with credit cards—§ 226.13.

Your first question is whether a credit card issuer may legally renew a card issued *prior* to the effective date of these amendments which is not an "accepted credit card." This situation might occur if a card isuer had sent an unsolicited credit card which has never been signed or used by the cardholder, and he has not authorized another person to use it. Under the provisions of the statute, the general rule is that credit cards may not be issued on an unsolicited basis. The only exception to this rule is in the case of a renewal or substitution of an "accepted credit card." Therefore, it is our view that the unsolicited renewal of a credit card which has not been accepted, is a violation of the Act and Regulation Z. This result is the same whether the initial card was issued prior to, or after, October 26, 1970, the effective date of the Act. note that the statutory prohibition against the issuance of unsolicited cards became effective immediately upon enactment. Only the effective date of the limitations on liability was delayed until January 25, 1971.

Your second question concerns the duties of a card issuer who decides that he will not hold cardholders liable for unauthorized use of their credit cards. Our view is that such an issuer is not required by the Act or Regulation Z to disclose this fact to the cardholder.

Excerpts from FRB Letter of March 10, 1971, No. 453, by Tynan Smith, Assistant Director.

NUMBER 134

This is in response to your letter *** concerning the application of the recent amendments of Regulation Z dealing with the issuance of credit cards. As you know, § 226.13(b) prohibits the issuance of credit cards unless in response to a request or application or as a renewal of, or in substitution for, an "accepted credit card."

Your question involves a customer who received and used an unsolicited credit card between November 1969 and October 1970. In November 1970, the card was renewed and has not been used since that date. The question is whether a renewal card may be issued in November 1971 even if the customer has not used his card within the preceding year.

The definition of "accepted credit card" in § 226.13(a)(1) provides that, "any credit card issued in renewal of, or in substitution for, an accepted credit card becomes an accepted credit card when received by the cardholder. ..." The original card issued to the customer became an accepted credit card when used. Therefore, the renewal card issued to the customer in November 1970 became an accepted credit card upon receipt. Consequently, it may be renewed even though it has not been used.

Excerpts from FRB Letter of March 18, 1971, No. 457, by Griffith L. Garwood, Attorney.

NUMBER 135

This is in response to your letter of March 2, 1971, requesting an interpretation of § 226.13 of Regulation Z as it applies to the issuance of credit cards in various situations. Your letter lists four types of cardholders and asks whether renewal cards under a Master Charge account may be sent to them without receiving a request.

(1) Cardholders were issued a Master Charge card as a replacement for a private bank card, but have not used their Master Charge card for purchases. These cardholders did make purchases on their bank charge card which the Master Charge card replaced, but at the time of replacement had a zero balance in their bank card account.

If the cardholder used his private bank card to make purchases, it thereby became an accepted credit card. Upon receipt, the replacement Master Charge card also became an accepted credit card under § 226.13(a)(1). Therefore, the fact that the Master Charge card has not been used would not prohibit the issuance of an unrequested renewal.

(2) A cardholder in a situation identical to that in the prior paragraph had a balance owing on the charge card at the time of its replacement by the Master Charge card.

The fact that a balance was owing on the previous charge card is irrelevant. As long as it was used, it became an "accepted credit card" and is thereby subject to continual renewal, unless, of course, the cardholder asks to have the account terminated.

(3) Cardholders received a Master Charge card as a result of a transfer of an existing open account receivable of a merchant prior to October 26, 1970. These cardholders made the payments to the bank after the transfer and upon receipt of statements on their new credit card account, but did not make any additional purchases using the Master Charge card. We presume that the merchant's plan did not utilize a card.

If the merchant had no credit card, in order for the Master Charge card to be considered "accepted" it must have been signed, used or its use authorized by another person. Since the card was not used, and you do not know whether it was signed, you cannot be sure whether it was accepted, and renewal would not be permissible.

(4) Cardholders identical to those in paragraph (3) had no balance at the time of transfer from the merchant's ledger to the bank's credit card account.

The existence of a balance at the time of transfer is, again, irrelevant. The key factor, as in paragraph (3), is whether or not the merchant had a credit card plan.

Excerpts from FRB Letter of March 29, 1971, No. 466, by Griffith L. Garwood, Attorney.

NUMBER 136

You inquire as to the meaning of § 133 of the Truth in Lending Act and § 226.13(b) of Regulation Z which provide that a cardholder is "liable" for unauthorized use of a credit card only if certain preconditions are met, and then only to the extent of $50. It is our view that the Act, as implemented by the Regulation, defines the legal rights of the parties. Any liability which is sought to be enforced by the creditor is, as a matter of law, limited by the statute. Card issuers who have not complied with the preconditions may inadvertently bill consumers for the unauthorized use of cards, with no knowledge that the use was unauthorized. However, ethical considerations would suggest that where a card issuer had knowledge that use was unauthorized, the card issuer would not seek to give the cardholder the impression that he was liable for the unauthorized charges, when, in fact, he was not.

Excerpts from FRB Letter of November 4, 1971, No. 550, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 137

You question] whether these situations would provide a "method whereby the user of such card can be identified as the person authorized to use it..." under § 226.13(d) of Regulation Z. You have described these two situations as follows:

1. System No. 1 would utilize a magnetic stripe credit card which would have encoded information in the magnetic stripe relating to the account number and credit limit. This system would be used with authorization terminals to determine if a card has been reported stolen, lost or over credit limit. Such an inquiry to a computer would receive response which would in effect say that the card presented is a valid card and that the amount of the purhcase is within the available credit limit. No additional input would be necessary.

2. The second system would be that of a magnetically encoded credit card described as above plus the additional requirement that the individual presenting the card would also furnish a code or series of numbers known only to him which would be matched at the computer with the information in the magnetic encoding. The information keyed into the system by the individual presenting the card would not be displayed in a legible manner on the card, however, would be encoded in the magnetic stripe.

We believe that the first instance cited would not satisfy the requirements of § 226.13(d) of Regulation Z, since in effect, it identifies the credit card, but in no way identifies the person presenting the credit card as the person authorized to use it. This method may identify a potential user as a person *not* authorized to use the card, *e.g.,* after it has been reported lost or stolen. However, the identification of a person not authorized to use the card would not satisfy the requirements of the Regulation.

We believe that the second instance provides an adequate method of identifying the cardholder as the person authorized to use it and would be in accordance with § 226.13(d) of Regulation Z.

Excerpts from FRB Letter of November 5, 1971, No. 551, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 138

You indicate that you are contemplating telephoning prospective customers to inquire whether they would like to receive a credit card. If they accept the invitation, a card will be sent to them. You inquire whether this procedure is permissible under § 226.13(b) of Regulation Z.

That section provides that "no credit card shall be issued except: (1) In response to a request or application, therefor..." In staff's view, it would be permissible for you to send out cards under the procedure you propose since, in fact, cards will only be sent in response to a request. In our view, it is immaterial that the request is in response to an oral solicitation. We think it is wise to list the date, hour, and name of the prospective customer, as well as the interviewer's initial, as you suggest, in order to answer any future questions as to whether a request for the card was actually made.

Excerpts from FRB Letter of November 29, 1972, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 139

This is on] whether a "customer identification card" proposed to be used by a savings bank client of yours is subject to the credit-card provisions in § 226.13 of Regulation Z.

The savings bank proposes to issue the "customer identification card" to savings depositors with balances above a certain amount and such issuance would be on an unsolicited basis. Having already established the credit worthiness of the customer, the savings bank would make loans to such persons within certain dollar limitations without the need for preparation of a loan application or credit check, but a promissory note would be executed in connection with each extension of credit upon presentation of the card. The card would be used only in conjunction with loan transactions from the savings bank and could not be used at any other bank or other creditor.

We believe that such "customer identification card" falls within the definition of "credit card" as provided in § 226.13(a)(6) of Regulation Z, since it is designed for use in obtaining money from time to time on credit. The fact that the customer must sign a promissory note in conjunction with such extension of credit would not, in staff's opinion, remove such card from the credit card designation, since this act is akin to the process involved in obtaining cash or goods on credit in standard plans where the customer must sign the sales draft or other evidence of the specific extension of credit. Moreover, we believe that

consumer annoyance and concern over loss associated with receipt of unsolicited cards, on which the Act's prescriptions were based, could be equally present in the proposed plan. Consequently, we believe that the "customer identification card" is a credit card subject to the provisions of § 226.13 and, specifically, may not be issued on an unsolicited basis.

Excerpts from FRB Letter of November 30, 1972, No. 649, by Griffith L. Garwood, Chief, Truth in Lending Section.

NUMBER 140

This is in response to your letter of April 10, 1973 to *** of our New York Regional Office. You have requested a staff ruling on whether a proposed course of action would be violative of Section 132 of the Truth in Lending Act, as amended. Because of the broad implications of this matter, it has been referred to me for attention.

The proposal is as follows: A department store plans to open a new store in a new market area. The store will obtain clearance from credit bureaus of the names of residents of the trading area on the basis of criteria specified by the store. The store will then send solicitation material to each of the persons whose names have been so cleared, inviting them to open charge accounts.

This solicitation material will consist of a printed message, together with a plastic card, in the form of a regular charge card, showing the addressee's name and an account number. The card will be encased in a "blister pack" attached to one of the sheets of the message. The procedure which will be followed in processing and validating the cards mailed to these consumers involves use of a sophisticated electronic system for imprinting credit cards on sales drafts. There is a special imprinter at all sales points. This equipment is connected to a central computer. There is inserted in the computer the number of every account which is restricted or limited in any way. No credit card may be used for a charge purchase without first being processed through the salescounter device. If the account number recorded in the counter device is one which has been inserted in the computer, the counter device will reject the card and not permit the sale to be completed. In the case of this store, there would be an additional procedure, in that special cash registers would be used. The sales clerk would first record the account number in the register which is connected to the computer. If the number is not cleared, the register will reject the card.

In the case of the mailing which is proposed for the new store, each account number shown on the cards mailed to residents of the area would be inserted in the computer so that the cards cannot be used for charging purchases until the recipient has first complied with the procedure which is required in order to validate the account and remove the number from the computer. The same numbers will be inserted in the computer serving all other stores in the chain, so that it prevents use of the card to charge purchases at any store in the chain.

The explanatory material sent to the customer with the card instructs the recipient to present to the sales clerk or a person in the credit office an authorization form signed by the customer together with some "acceptable form of personal identification." If a person should present the card to a sales clerk without having first submitted the signed authorization, the card is to be rejected. The sales clerk is then required to call the credit office and she will then be advised to obtain the signed authorization and identification. Once this is done, the sales clerk will advise the credit office, which will remove the number from the computer control and the account will be validated so that the customer will be permitted to use the card for the purpose of charging purchases thereafter. You have also attached a copy of the text of the mailer with which the card will be enclosed.

It is our view that the distribution of these cards, under the conditions described, would violate Section 132 of the Truth in Lending Act.

Section 130(k) of the Act defines the term "credit card" to mean "any card, ... existing for the purpose of obtaining money, property, labor, or services on credit." The card in question clearly constitutes a "credit card." The fact that you have imposed a condition subsequent (validating the card by certain in-store procedures) does not alter the legal status of the card. While it may be true that the card cannot be used by the recipient (or any other person) to charge purchases *automatically* upon presentation, it is a card which is *"existing i.e.,* was created] for the purpose of obtaining property on credit" and you are prohibited by the Truth in Lending Act from sending this card on an unsolicited basis.

The procedures proposed to be instituted, such as requiring additional identification, do not militate against considering the device a credit card. Further, the fact that the card can be used by a third party only with fictitious identification and, therefore, the consumer "will not have reason to be concerned," is not persuasive. The card is not an imitation credit card or facsimile of one. It is not an introductory or a "get acquainted" card. It is an actual, authentic credit card (as defined in the Act) the furnishing of which is surrounded by certain procedures designed to prevent its use until such use is concurrent with the user's authorization. This proposal would create an actual (albeit dormant) account in the user's name, create a card with the number embossed thereon, and furnish that card on an unsolicited basis to the persons whose names are imprinted on the card. The imposition of a condition subsequent (*i.e.,* signing the authorization accompanying the card) cannot change the status of the card. There are many analogous situations whereby a user must execute another document (*e.g.,* a sales draft, promissory note, etc.) before the credit card may be used. One credit card issuer requires the knowledge of a series of numbers which are punched in a certain sequence before a credit card may be used. The card is no less a credit card because of these requirements. Moreover, the requirement of the presentation of separate, reliable identification is imposed in numerous instances in connection with the use of credit cards of various kinds to prevent unauthorized use of the card.

Therefore, it is the position of this Office, as well as the staff of the Federal Reserve Board to which we have submitted this matter, that the course of action proposed, if effectuated, would constitute a violation of section 132 of the Truth in Lending Act.

Excerpts from FTC Informal Staff Opinion Letter of April 12, 1973, by Sheldon Feldman, Director for Consumer Credit and Special Programs.

NUMBER 141

This raises] three questions with respect to the application of Regulation Z.
The first question relates to a lender's disclosure responsibilities for a loan brokerage fee paid by the customer to a loan broker. Specifically, you describe the situation as follows:

> The situation most often arises in a purchase transaction where the buyer-borrower contacts a mortgage broker for a loan, it being agreed that if the loan is obtained, then the mortgage broker will be paid a stipulated fee. The mortgage broker is an independent party who will frequently submit the application to two or three lenders, taking the best deal offered. The fee to be paid to the broker is negotiated directly between the broker and the borrower, the lender not being involved in this phase of the loan at all."

Since the loan broker has arranged the extension of credit, both he and the lending institution are creditors in the credit transaction and the provisions of § 226.6(d) relating to multiple creditors apply. Under that provision, both creditors may join in making a single disclosure, in which case the brokerage fee must be reflected as a finance charge on the disclosure statement. In the event the separate disclosures are prepared, the loan brokerage fee must be reflected on the disclosure statement of the loan broker regardless of its disclosure by the lender. However, with respect to theldern's disclosure statement, the loan brokerage fee would need to be disclosed only if it is within the lender's knowledge and the purview of his relationship with the customer, as prescribed by § 226.6(d). The lender obviously cannot disclose the fee if he is not aware of it. On the other hand, should the loan brokerage fee be paid directly by the lender to the loan broker (for example, if the fee is withheld from the loan's proceeds and is paid to the broker), the fee would be within the lender's knowledge and it should be disclosed on the lender's disclosure statement.

Since the loan broker has arranged the extension of credit, both he and the lending institution are creditors in the credit transaction and the provisions of § 226.6(d) relating to multiple creditors apply. Under that provision, both creditors may join in making a single disclosure, in which case the brokerage fee must be reflected as a finance charge on the disclosure statement. In the event the separate disclosures are prepared, the loan brokerage fee must be reflected on the disclosure statement of the loan broker regardless of its disclosure by the lender. However, with respect to the lender's disclosure statement, the loan brokerage fee would need to be disclosed only if it is within the lender's knowledge and the purview of his relationship with the customer, as prescribed by § 226.6(d). The lender obviously cannot disclose the fee if he is not aware of it. On the other hand, should the loan brokerage fee be paid directly by the lender to the loan broker (for example, if the fee is withheld from the loan's proceeds and is paid to the broker), the fee would be within the lender's knowledge and it should be disclosed on the lender's disclosure statement.

Secondly, you question whether a real estate lender who makes a flat charge to cover all closing costs, points and recording charges may disclose such charge simply as a prepaid finance charge. The flat charge would include not only points under § 226.4(a) but also recording fees under § 226.4(b)(1) and typical closing costs under § 226.4(e).

While we recognize that there may be instances in which a lender charges a fee as part of the finance charge that may incidentally also cover one or more § 226.4(e) items (for example, the one point "origination fee" charged in FHA and VA transactions) staff finds your porposal, which would include *all* applicable charges in § 226.4(e), to be objectionable for a number of reasons. First of all, the specific wording in § 106(e) of the Truth in Lending Act and § 226.4(e) of the Regulation provide that such charges *shall not be included in the finance charge, if certain conditions are met. Secondly, we believe that to allow the proposed treatment would destroy the important uniformity between disclosure methods used by various credit extenders, and that it would thereby frustrate the ability of consumers to shop for credit utilizing the APR disclosure. Finally, the approach would have the effect of overstating the annual percentage rate which is prohibited by* § 226.6(h) and § 226.601.

Your final question is stated as follows:

"Assume that the real estate lender directs the borrower to pay certain items in cash prior to closing. Assume further, that said items would ordinarily be included as a part of the Amount Financed. Would such items so paid in cash have to be disclosed anywhere on the Disclosure Statement? Suppose further that notwithstanding the directions of the lender to the borrower that said items be paid in cash (in consequence of which, the items are not disclosed on the Disclosure Statement), the borrower fails to do so, and accordingly at closing the lender does in fact deduct for said items out of the loan proceeds. Does 226.6(g) negate any necessity for a new disclosure or modification of the TIL at the time of closing?"

Charges which the lender directs the borrower to pay in cash prior to closing may or may not have to be itemized on the disclosure statement, depending upon the type of charge. Finance charges under § 226.4(a) and other charges under § 226.4(b) must be itemized. On the other hand, charges under § 226.4(e) do not have to be itemized when they are not part of the credit extended. Should the customer fail to make some payments in cash as required by the creditor and as indicated on the disclosure statement, so that the creditor must later deduct such items from the loan proceeds, it is staff's opinion that such an occurrence would constitute a subsequent occurrence under § 226.6(g) and new disclosures would not be required.

Excerpts from FRB Letter of July 19, 1973, No. 699, by Griffith L. Garwood, Adviser.

NUMBER 142

This concerns] series of questions under Regulation Z with regard to your client's desire to reissue its credit cards to existing cardholders whose credit privileges have been temporarily suspended on account of exceeding credit limits or failure to meet the required minimum monthly payment schedule on a recurring basis.

The first question is whether the bank may reissue such credit cards by simply mailing a new set to the offending cardholder when he has cured the problem with his account. Our staff believes that the reissuance of such cards would fall within the catregory of a "renewal" of an accepted credit card and would not constitute a prohibited unsolicited issuance of a credit card under § 226.13. We also agree with your conclusion that since the issuance of the card in these circumstances is simply a renewal of a temporarily suspended credit card under an existing account, no new Truth in Lending disclosures would be required at the time of its issuance.

With regard to your question about whether there is some time period after which the bank may only reissue such credit cards at the request of an offending cardholder, and after which the bank is required to again make such initial disclosures, we believe that this determination should be made with reference to the particular situation. If such a reissuance, in fact, constitutes the opening of a new account, we believe that new disclosures should be made and a request should be obtained prior to the issuance of a credit card. This would be contrasted with a situation in which the credit card privileges on an account are simply suspended for a period of time.

Excerpts from FRB Letter of July 31, 1973, No. 702, by Griffith L. Garwood, Adviser.

NUMBER 143

This is on] a series of questions under Regulation Z regarding the issuance of credit cards by your company to be used for commercial purposes by the agents of various corporate clients of your company. Specifically, you indicated that the cards provide services similar to oil company cards and are issued to fulfill the transportation needs of the traveling representatives of your clients. The cards are embossed with the name of the corporation as well as the individual employee, the account number, expiration date, and in some cases, the vehicle number assigned to the employee. Your company bills the corporate client monthly, and the agents carrying the cards are in no way held responsible for any purchases.

Your first two questions center on the issue of whether the term "cardholder" as defined in § 226.13(a)(4) of Regulation Z should properly apply, within the context of your commercial transactions, to the corporate client or to the individual agents using your cards in behalf of the corporation. Within the commercial context posed, we believe that the term "cardholder" would most appropriately refer to the corporation, since it is responsible for the debts incurred and since its name as well as the individual card user's is embossed on the card—the card is, in fact, issued to the corporation which has assumed the entire responsibility for paying the obligations arising from its use. Accordingly, we believe that the disclosure requirements of § 226.13(c)(3) and (4) would be satisfied by the mailing of one notice and one postage paid preaddressed notification to each corporate cardholder. In regard to the notification of each cardholder of its potential liability, although the requirements of § 226.13(c)(4) may be satisfied by a separately mailed notice disclosing liability, this staff has expressed the view that card issuers should not continue to mail our cards which misstate or overstate cardholder liability.

In regard to your third question concerning the use of "pool cards" which do not bear the name of any one individual, but simply carry the name of the corporation and the words "pool card" plus a signature panel signed by a designated aent of the corporation who is not intended to be the ultimate user of the card, we believe that this arrangement does not satisfy the requirement of § 226.13(d) inasmuch as no method is provided whereby "the user of such card can be identified as the person authorized to use it."

In reference to your question concerning the application of § 226.13(h), we view this section as upholding the validity of State laws and other contractual agreements which impose more stringent limits on liability than does the Federal Act. Thus, we believe that the section should not be construed to permit the waiver of cardholder protection by any agreement between the card issuer and the cardholder. Since this section refers specifically to "liability," its application to State law disclosure requirements *per se* is questionable. However, assuming that a given State law mirrored the Federal Act to the point of making specific disclosures a condition precedent to imposing any liability on a cardholder, it would be our view that the penumbra of the term "liability" as used in the Federal Act could cover the stricter State disclosure requirements as well as specific liability limits.

We trust that this is responsive to the issues raised.

Excerpts from FRB Letter of September 19, 1973, No. 716, by Griffith L. Garwood, Adviser.

NUMBER 144

This is in reply to a question] whether a card, which your bank client proposed to send to certain of its customers, constitutes a "credit card" under § 226.13(a)(6) of Regulation Z so as to prohibit its unsolicited distribution.

Prior to the enactment of the credit card amendments to the Truth in Lending Act, the bank mailed to all of its customers with certain types of personal checking accounts an identification card for use in facilitating check cashing by such customers. The purpose of the identification card is to permit tellers at branches other than the customer's home branch to verify the signatures on checks presented to them. If the customer does not have his identification card, the teller is required to verify the customer's signature by other means. In some cases, tellers are required to telephonically verify checking account balances or seek approval from a platform officer.

Some of the bank's customers have overdraft checking privileges under a revolving loan agreement. Under this plan, a customer can obtain a loan up to his authorized credit limit either by writing a check in excess of his account balance, or by presenting a written authorization for an overdraft loan. When the written authorization procedure is used, the money is transferred into the customer's checking account and, thereafter, may be drawn out by use of a check. When a customer with overdraft privileges presents a check or authorization to the teller he may inquire telephonically to see whether it is within the customer's authorized credit limit.

As a result of advances made in the application of computer electronics to bank services, the bank is presently able to verify computer data by use of a card which, when inserted in a terminal at a teller station, provides instant access to a data bank containing information on the customer, and relates this information back to the terminal location. The bank now proposes to replace the existing identification cards with new cards containing an electronically readable code identifying the customer's checking account which may be inserted in a terminal at the teller's station. The new card would have a space for the customer's signature and would serve the same purpose as the identification card, except that it would also provide a means of electronically accessing the customer's account. The card would be plastic and would be similar in size, shape and appearance to a typical credit card. As in the case of the identification card, inability to present the new card would result in the teller having to resort to other means of verifying the customer's signature, account balance and, where he had an overdraft checking facility, his credit limit.

The bank plans to mail the new card to checking account customers on an unsolicited basis. There is clearly no Federal legal impediment to the bank mailing such cards to its checking account customers who do not have overdraft credit privileges. However, the question arises whether mailing the new card to customers with such credit privileges violates § 132 of the Act and § 226.13(b) of Regulation Z. It is staff view that in such cases, the card in question falls within the § 226.13(b)(6) definition of a "credit card" in that it is a device "existing for the purpose of being used from time to time upon presentation to obtain money ... on credit." As such, it may not be distributed on an unsolicited basis unless the prior cards were "accepted credit cards" within the definition of § 226.13(a)(1), which most of them may have been.

Although presentation of the card by itself does not entitle the cardholder to an extension of credit (since he must also present a check), standard credit card plans normally require some device in addition to the credit card to activate an extension of credit, whether it be a sales draft, code number, authorization slip, promissory note, etc. While the risk of cardholder liability for unauthorized use in the event of loss or theft of the card is minimized in view of the available

electronic safeguards and the law associated with forged checks, we do not believe that mere limits on exposure to liability for unauthorized use is determinative of whether a particular device is a credit card. Certainly, a typical credit card would not lose that designation for purposes of Regulation Z simply because the card issuer agreed to assume all risk of loss for unauthorized use. Moreover, under the present statutory scheme, we do not believe it is relevant that the card may be used only at the issuer's place of business, that it will be distributed only to existing customers, or that it will not enlarge the present credit rights of recipients. These characteristics would be equally applicable should a retailer seek to mail unsolicited credit cards to current account holders who do not presently have cards and that procedure is clearly subject to the Act's proscription. Finally, we believe it is not uncommon for card issuers, particularly retailers, to extend credit under a credit card plan despite the fact that the customer may not have his credit card with him so that other means of account verificaion must be utilized. Consequently, we do not find the fact that a bank employee may on occasion authorize an extension of credit where the customer does not have the card in his possession compelling on the issue of whether the card is a credit card.

Excerpts from FRB Letter of September 19, 1973, No. 717, by Griffith L. Garwood, Adviser.

NUMBER 145

In your letter of September 26, 1973, you indicate that you would like to reissue credit cards to certain customers whose accounts were deleted from your bank's master file due to inactivity. You question whether under Regulation Z you must make the disclosures required under § 226.7(a) and whether new cards can be sent to such customers on an unsolicited basis.

Staff's analysis of the problem would indicate that the suspension of credit privileges was not intended to be a temporary one by virtue of the fact that the account was closed and record of the account was deleted from the master file. Consequently, inasmuch as a new account will be established, we believe that the provisions of § 226.7(a) apply in that disclosures should be made prior to the use of that account. In addition, it is staff's view that the issuance of credit cards to such customers without their request would be deemed to be unsolicited in violation of § 226.13(b).

Excerpts from FRB Letter of October 10, 1973, No. 721, by Griffith L. Garwood, Adviser.

NUMBER 146

This is on] the issuance of credit cards under Regulation Z. You indicate that your bank has entered into an agreement with a credit card company, which is discontinuing its credit card services, including the use of its credit cards. Your bank intends to send BankAmericards to all persons who hold "accepted credit cards" issued by the credit card company. (See § 226.13(a)(1)). You also plan to make the disclosures under § 226.7(a) to the new BankAmericard holders. In addition, the customers of the credit card company with existing outstanding balances will be given the choice of continuing their obligations with the credit card company or having the unpaid balance transferred to the BankAmericard account, subject to the terms and conditions of such account. In such cases, you indicate that those customers who wish to transfer their existing accounts to the BankAmericard account will be given notification in accord with § 226.7(e).

Staff finds nothing in the proposal which violates Regulation Z. The regulation clearly permits the issuance of credit cards by a "successor card issuer." (See § 226.13(b)(2)) The fact that the customers have the choice of maintaining existing balances with the present credit card company or transferring them to the new bank card account has no effect on your right to issue your credit card in substitution for the credit card company's cards which will no longer be honored.

Excerpts from FRB Letter of October 11, 1973, by Griffith L. Garwood, Adviser.

NUMBER 147

This is in response to your letter of January 31 relating to the distribution of credit cards under Regulation Z. We understand that your bank currently has a *** plan and has installed automated teller machinery enabling *** customers to receive cash advances which are charged to their *** accounts. However, the *** which the customers now have for use are not adaptable for use in the machines, so new cards must be issued. Inasmuch as the new cards must be specially printed or embossed in order to be usable in the machines, such cards cannot be used in credit transactions other than those taking place in the machines. Consequently, the bank intends to issue to current *** holders a separate card which can be used in connection with the machines; each *** holder would then have two separate cards. The question is whether the additional separate card to be used in conjunction with the machines can be mailed to current *** holders on an unsolicited basis.

Staff's view is that the separate additional card to be used in conjunction with the machine falls within the definition of "credit card" in § 226.13(a)(6) of Regulation Z. Therefore, the issuance of such credit cards would be subject to the restrictions of § 226.13(b). Inasmuch as the new separate credit card does not renew an existing credit card nor substitute for it, it is staff's opinion that such card could not be sent to persons, including current *** holders, on an unsolicited basis.

Excerpts from FRB Letter of February 19, 1974, No. 757, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 148

This is in response to your letter of March 20 in which you raise two questions regarding the issuance of credit cards under Regulation Z. Specifically, you point out that your bank client presently has outstanding credit cards which can be used to make retail purchases and to obtain cash advances from the bank or other participating banks. Your client is investigating the use of automated teller machines whereby a cardholder would be able to obtain loans through the machine by use of his credit card. You ask whether a new card which is usable in the teller machines, as well as in transactions involving retail purchases and cash advances from the bank and participating banks, may be sent out in substitution for the current credit cards now outstanding.

It is staff's opinion that such new cards may be issued under § 226.13(b)(2) in substitution or renewal of "accepted credit cards" (see § 226.13(a)(1)) without a specific request or application therefor.

You referred to a previous staff opinion letter (No. 757 dated February 19, 1974) in which staff took the position that a new separate credit card which could be used to initiate credit transactions through an automated teller machine could not be issued on an unsolicited basis to current cardholders. In letter 757, the credit card usable in the automated teller machine was issued as a supplement to the existing credit card not in substitution or renewal of an existing card. Consequently, the supplemental new card was in itself a credit card subject to the unsolicited restrictions.

Excerpts from FRB Letter of April 5, 1974, No. 775, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 149

This is in reply to your letter dated March 27 asking for an opinion as to the application of Regulation Z with respect to the following situation:

Your client, a retailer and card issuer, has issued to its customers credit cards which may be utilized to make purchases on credit at any of several stores operated by that retailer. The credit cards are honored upon presentation within a certain floor limit; however, in the case of larger purchases, the specific approval of the credit office must be obtained. In the case of inactivity of an underlying open end credit account, the card issuer may purge its file of the inactive account, but the credit card remains outstanding and may be utilized by the cardholder at any time, since he is not notified when his account has been purged. However, if the cardholder of a purged account should use his credit card, the account is restored to active status. The purging of such inactive accounts is done by the card issuer only for the purpose of conserving the limited capacity of his accounting equipment.

In the case of purging an inactive account from the file as described above, in the opinion of our staff, the account is not actually closed but is placed in temporary suspension for the convenience of the card issuer pending further use of the credit card. Since the credit card is not cancelled, expired, or recalled, and may be utilized at any time upon presentation by the cardholder who has been given no reason to believe the status of his account has been affected by inactivity, reactivation of the account in the described manner would not be considered subject to § 226.7(a) of Regulation Z.

However, if the account were, in fact, closed and the credit card cancelled, expired, orotherwise rendered unacceptable upon further presentation, then § 226.7(a) and § 226.13(b) of Regulation Z would apply should the card issuer wish to again extend credit by means of a credit card to such former cardholder.

Excerpts from FRB Letter of April 10, 1974, No. 779, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 150

This is in response to your recent inquiry as well as several others received concerning the proposed issuance of certain plastic cards to checking and savings account customers of banks. The cards in question are designed to be used in automated teller machines and will permit customers to make deposits and withdrawals from their checking or savings accounts, to pay loan installments and utility bills, and to transfer funds between various accounts. In some cases, however, the cards may be used by customers to obtain cash loan advances which will result in charges against their overdraft checking account or credit card account. Yoù have asked our opinion, with reference to Sec. 226.13(b) of Regulation Z, as to whether such cards may be issued on an unsolicited basis.

In regard to those cards which can be utilized to obtain cash loan advances charged to a credit account, whether an open end account relating to a credit card or an overdraft checking account where the creditor and customer agree to overdraft privileges, it is staff's opinion that such cards clearly fall within the definition of credit card in Sec. 226.13(a)(6) and thus may not be issued except in response to a specific request.

The remaining cards in question, which may *not* be used to effectuate a cash loan advance, fall into two categories, depending upon whether the automated teller machines facilitating their use are "on-line" with the bank's computer or not. A card used in conjunction with an "on-line" teller machine will not, except in the case of computer malfunctions, permit an overdraft of a customer's account. Since credit cannot be extended, these cards would clearly appear to fall outside the Regulation's definition of credit cards and thus, beyond the sanction of Sec. 226.13(b) and may be distributed on an unsolicited basis.

The use of cards in conjunction with automated teller machines which are *not* "on-line" with a computer may, at times, result in a customer overdrawing his account. However, it is our understanding that the banks in question do not intend that the customer use the card to obtain credit or to borrow funds and that in the event that such a transaction results in an overdraft, the banks will promptly notify the customer of that fact and require immediate repayment plus, usually, the normal overdraft fee. If overdrafts become a frequent occurrence under these circumstances the card will be withdrawn from the customer or the machines will be programmed to reject the card's further use. If this procedure is followed, we do not believe that the banks have granted credit to their customer, which is the *right* to defer the payment of debt or to incur debt and defer its payment (Sec. 226.2(a)). Nor do we view the fee for overdrawing an account in these circumstances as the imposition of a finance charge (Sec. 226.4(d)). Thus, is is staff's opinion that cards be used in conjunction with a machine that is not "on-line" with a computer likewise fall outside the definition of credit card and may be issued on an unsolicited basis, so long as the bank follows the procedures just described. However, where there is an agreement between the bank and the customer to honor any such overdrafts, staff would view such transasctions as "credit" and cards issued to facilitate those transactions as "credit cards."

In reacing these technical conclusions, staff recognizes that at some future date, an insurer of such "non-credit" cards might wish to consider offering credit privileges in connection with such cards. Any offering of credit privileges in connection with such cards unless remote in time from, and otherwise unconnected with, this issuance could cast doubt upon the *bona fides* with which the cards were initially provided and might indicate an intent to evade the dictates of Sec. 132 of the Act. Also, the existence of any facts or circumstances at variance with, or in addition to, those described above could lead to a different conclusion.

Excerpts from FRB Letter of May 16, 1974, No. 796, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 151

This is in response to your letter of June 12 to Mr. Solomon, concerning the applicability of the limited liability provisions of § 226.13(c) of Regulation Z for unauthorized use of automated teller cards where a secret code number is to be used with the card to authorize withdrawals.

In order for the limited liability provisions of § 226.13(c) to apply, such cards must fall within the definition of *credit cards* in § 226.13(a)(6). Staff opinion letter 796, which is enclosed, indicates which types of teller cards are considered credit cards for purposes of Truth in Lending. It is not clear that the plan you describe fits the letter's description of those automated bank teller cards which are credit cards for purposes of § 226.13. If your card may be used to obtain cash loan advances, however, it would be a credit card and the limitation of the liability provisions in § 226.13 would apply.

You suggest that, since your bank teller card is used in conjunction with a number, it differs significantly from a card which requires no secret number. Staff does not believe that the fact that a secret number is used with the card is relevant for purposes of § 226.13. In fact, some of the bank teller cards discussed in staff letter 796 were to be used in conjunction with a secret number.

Excerpts from FRB Letter of July 9, 1974, No. 818, by Jerauld C. Kluckman, Chief, Truth in Lending Section.

NUMBER 152

This is in response to your letter *** in which you ask about the applicability of § 170 of the Fair Credit Billing Act and § 226.13(i) of Regulation Z to check guarantee card plans operated by some banks.

As you describe in your letter, the check guarantee card is used as a form of identification by those persons whose checks the bank has agreed to guarantee. These checking account customers may or may not have an overdraft privilege agreement in connection with their demand deposit account.

Your question is:

"When a guarantee card is used and it (presumably the check used in connection with the card) causes an overdraft advance, does the customer have the right to withhold payment of the advance from the bank if he (1) has a claim or defense against the merchant arising out of the transaction in which a guaranteed check is used, and (2) all of the other conditions of § 226.13(i) are satisfied?"

It is staff's opinion that the provisions of § 170 of the Act and § 226.13(i) of Regulation Z, which allow customers to withhold payment and assert claims and defenses they may have vis a vis the merchant against the card issuer, do not apply in the situation you describe.

It is staff's understanding that both the cards and checks might be used with merchants who have no specific agreement with the bank to honor either. It is staff's view that a basic precept underlying Congress decision to enact § 170 was the idea that card issuers have some control over and close relationship with merchants with whom they have contracts to honor their card. Section 170 reflects the Congressional concern that the card issuer has a responsibility to exercise this control, through charge-backs or other means, on behalf of the consumer in appropriate cases. The situation you describe does not seem to reflect this type of close relationship and control.

It is also staff's understanding that the card itself has no underlying credit account which can be debited or credited for purchases, loans, or payments. The only credit which may ever be extended incident to use of the card would be pursuant to an overdraft checking agreement, which a customer may have without having a check guarantee card. It is, staff understands, the check and not the card itself which triggers the extension of credit.

It also seems apparent that in many situations it may be difficult, or even impossible, for the customer to know with any certainty which check, used in conjunction with the card or not, triggered the extension of credit, since the first of several checks drawn may not be the first to clear the bank and produce an overdraft.

These considerations lead staff to the opinion that the provisions of § 170 of the Act and § 226.13(i) of Regulation Z do not apply to the plan which you outlined even though they do apply to credit card issuers and their customers generally.

Excerpts from FRB Letter of October 22, 1975, No. 931, by D. Edwin Schmelzer, Chief Attorney, Fair Credit Practices Section.

NUMBER 153

This is in response to your letter ***, asking about certain terms in your revolving credit agreement which may be inconsistent with requirements of the Fair Credit Billing Act, P.L. 93-495. In particular your credit agreement contains a disclaimer of liability for merchandise or services purchases which may be in conflict with § 170 of the Fair Credit Billing Act. This section permits, within limits, the assertion of claims and defenses. Your concern is with the need to modify existing contracts which contain the inaccurate disclosure.

First, it is the opinion of staff that the 15-day rule for a change in terms in open end accounts as required by § 226.7(f) of Regulation Z does not apply in your case, because the disclosure which you have been making is not a term which was previously required to be disclosed under Regulation Z. Section 226.7(f) is designed to accommodate a change in terms required to be disclosed. As a result, it would not be necessary to notify existing customers that the disclaimer of liability clause is inoperative.

Your second question relates to § 226.7(i) which requires a disclosure to existing customers of, among other things, their right to assert claims and defenses against card issuers. One could argue that such a disclosure is inconsistent with the disclaimer provision in existing contracts and a creditor thereby becomes liable under § 226.6(c) for making a contradictory disclosure. It is the opinion of the staff, however, that that is not the necessary result. To the extent that a tort claim is asserted or that a transaction in question is less in amount than the $50 limit or took place outside State or the 100-mile radius limits, the disclaimer of liability clause is still operative. By making the disclosures required by § 226.7(i) as well as § 226.7(d), notification is merely being made of a delimitation of the disclaimer provision.

Additionally, even if the disclaimer clause can be considered to contradict the disclosures required by the Fair Credit Billing Act, when the disclaimer disclosure was originally made it was made prior to the effective date of the Act. It is only now after the effective date of the Act that any possible inconsistency arises. As a result, in staff's opinion, it would not be necessary to indicate in a separate notice to existing accounts the limitations on the disclaimer clause because that is, in effect, being done through the Fair Credit Billing disclosure statement being sent to customers. However, for new accounts opened after October 27, the disclaimer clause should be appropriately modified or deleted to reflect the state of the law. The general transition period provided in § 226.6(k) until April 30, 1976, should provide ample time to secure complying forms and in the meantime existing forms can be utilized so long as the disclaimer clause is in some way altered, deleted, or supplemented.

Excerpts from FRB Letter of November 3, 1975, No. 937 by Jerauld C. Kluckman, Assistant Director.

NUMBER 154

This is in reply to your letter *** asking staff's advice about § 226.13(l)(1)(ii) of Regulation Z. You ask whether this section prohibits a card issuer from requiring merchants to maintain a deposit account as a condition of participation in a credit card plan. You indicate that these deposit accounts are to be used "solely for the purpose of providing a means of conduit by which the bank may disburse to the merchant funds in payment of charges made on credit cards issued by the bank." So long as such a deposit account is essential to the credit card plan, staff believes that § 226.13(l)(1)(ii) does not prohibit a card issuer from requiring merchants to open such an account as a part of the credit card plan.

You further ask whether a credit card issuer could require the merchant to pay the normal service charges for such a demand deposit account required to be opened as a condition of participating in a credit card plan. Assuming that the merchant voluntarily agrees to open a normal, commercial demand deposit account as an adjunct to the credit card plan, staff believes that the normal service charges may be imposed on the account. However, if the merchant does wish to have such an account, the card issuer may require that he open an account for the limited functions of transferring debits and credits under the credit card plan but no service charges or minimum balance requirements may be imposed on such an account.

Excerpts from FRB Letter of Nobember 19, 1975, by Jerauld C. Kluckman, Assistant Director.

NUMBER 155

This is in response to your letter *** in which you raise several questions under the Fair Credit Billing amendments to Regulation Z.

You ask whether a credit card issuer could require the merchant to pay the normal service charges for a demand deposit account required to be opened as a condition of participating in a credit card plan. Assuming that the merchant *voluntarily* agrees to open a normal commercial demand deposit account as an adjunct to the credit card plan, staff believes that normal service charges may be imposed on the account. However, if the merchant rejects such an account, the card issuer may require that he open an account for the limited functions of transferring debits and credits under the credit card plan, without service charges being imposed.

You also indicate that your merchant agreements contain a clause stating that the merchant "will make no special charge or extract any special agreement, condition, or security" from holders of your card in connection with any sales draft. You state that this language has always been interpreted and explained by your organization as prohibiting surcharges but not discounts. It is staff's opinion that the language in your letter which apparently quotes from your merchant contracts, without more, does not draw the distinction which you attempt to make.

The notification requirement of § 226.13(1)(2) was placed in the regulation specifically to combat the *in terrorum* effect of the existence of such clauses in merchant agreements. To the extent that the language of your merchant agreements can be construed to prohibit discounts, participating merchants should be made aware of the fact that this can no longer be its legal effect.

Excerpts from FRB Letter of November 24, 1975, No. 955, by Jerauld C. Kluckman, Assistant Director.

NUMBER 156

You ask whether the prohibition of offsets provisions of § 226.13(j) of Regulation Z apply to overdraft check credit which was extended by use of a card. The situation you describe is one in which a customer may access his checking account by use of a card. In some cases, a customer has an overdraft privilege connected with that checking account and by using the card may activate that overdraft line of credit. Staff believes that the particular card in question is a "credit card" under § 226.2(r) in those situations in which it is connected with an overdraft checking account.

It is staff's view that the plan you describe is a credit card plan in all cases in which the card is connected with a check overdraft privilege. Since § 226.13(j) by its terms applies to all credit card plans, any credit transaction on the account encompassed by that plan is covered by the prohibition of offsets contained in the section.

Excerpts from FRB Letter of December 2, 1975, No. 964, by Jerauld C. Kluckman, Assistant Director.

NUMBER 157

This is in reply to your letter of November 6, in which you ask about the applicability and implementation of § 226.13(i) of Regulation Z.

You ask whether this section, which allows customers, under certain circumstances, to withhold payment for an item purchased by use of a credit card and assert claims and defenses he may have *vis a vis* the merchant against the credit card issuer, applies to two-party credit cards. Section 170 of the Act and the cited section of the Regulation speak in terms of card issuers generally. Therefore, two-party card transactions are covered by the terms of the Regulation. However, because of the provisions of § 226.13(i)(1)(iii), the dollar and distance requirements set out in the section do not apply to two-party credit cards.

Additionally, it is staff's view that the section was not meant to override or preempt any State laws which give customers an unlimited or less restricted right to assert claims and defenses against the card issuer. For example, those State laws which forbid or restrict sale or assignment of consumer paper on a "no recourse" basis or which forbid or restrict the "holder in due course" or "waiver of defense" doctrines may give the customer the right to assert such claims or defenses without reference to the law. Any such State laws which provide greater protection to consumers, as contemplated under § 171(a) of the Act and § 226.6(b)(2) of Regulation Z, would continue to operate.

You also ask how the customer is to determine whether he may or may not withhold payment. The customer will, of course, at the outset, have to determine whether he thinks he has a valid claim or defense to assert. If he believes he does, then he may withhold payment until the dispute is settled.

You also ask whether the customer may continue to withhold payment even after investigation has shown his complaint to be invalid. Your statement in this regard leads me to believe that you may be confused concerning the requirements of this section as opposed to the requirements of § 226.14, which prescribes an error resolution procedure. Section 226.13(i) places no obligation on the creditor to investigate a complaint nor does it require the customer to acquiesce in any determination made by the creditor with regard to the disputed item. Although this section would certainly countenance, and to some extent encourage, an amicable settlement of the dispute between the customer and creditor or merchant, the customer may continue to assert his claims and defenses if he is dissatisfied with the creditors handling of the matter. The creditor, of course, continues to have his remedies at law, but this section allows the customer to assert his claims and defenses in a lawsuit and, if he prevails, to continue to withhold payments thereafter. If a court rules against the consumer in such a matter however, the creditor is free to take whatever collection actions are appropriate.

Excerpts from FRB Letter of December 19, 1975, No. 980, by Frederic Solomon, Assistant to the Board and Director, Office of Saver and Consumer Affairs.

NUMBER 158

This is in response to your letter *** in which you asked whether § 226.13(j) of Regulation Z prohibits a bank from expressly taking security for a credit card line of credit at the time of the original approval of the credit, or subsequent to credit approval upon agreement by the customer in consideration of continuing the line of credit. You state that the security would be in a time or savings account, would be specific as to an amount which would not be available to the customer for withdrawal, and would be evidenced by a separate document which also identifies the account.

The approach you suggest would apparently be consensual and would not have the element of surprise which Congress seemingly had in mind when it passed § 169 of the Fair Credit Billing Act. Further, it applies to specific funds in a specific amount, unlike an offset which, as a general matter, applies to any and all funds in a customer's demand or savings deposit account. Therefore, in staff's view, § 226.13(j) does not prohibit such an explicit consensual security agreement so long as it is clearly and conspicuously disclosed to the customer as a security interest in accordance with § 226.7(a)(7).

Excerpts from FRB Letter of January 7, 1976, No. 989, by Jerauld C. Kluckman, Assistant Director.

NUMBER 159

This is in reply to your letter *** in which you asked for the staff's opinion regarding the operation of the Fair Credit Billing Act and its implementing provisions in Regulation Z.

The situation which you set out is essentially as follows: You purchased an item from seller] which is evidently near your home. The item in question cost $103.35, including sales tax. After installation, the item was found to be defective. On or about February 2, 1976, you received a periodic statement from card issuer] upon which the debit for the purchase of the item was reflected. Between the time that you discovered the item was defective and the time you received the ... periodic statement on February 2, you attempted to contact seller] in order to resolve the problem and discovered that they had gone out of business and filed reorganization proceedings in Miami, Florida, under the bankruptcy laws. By letter dated February 2, you notified the ... issuing bank that you did not intend to pay the $103.35 attributable to the defective item and that you were asserting your right to do so under the Fair Credit Billing Act. You did, however, pay the remainder of the bill.

On February 12, the card issuer responded to you by letter stating that they did not feel that your withholding payment was proper inasmuch as, in their opinion, the Fair Credit Billing Act did not cover situations such as you have encountered. A series of letters were exchanged between you and the creditor in which this matter was further discussed. On March 1, you received another periodic statement which reflected the $103.35 in its new balance and, because there were additional purchases made on the account during this period, included a finance charge of $2.14 computed on the average daily balance of $142.75.

You ask whether the accrual of the finance charges in this manner is proper under the Fair Credit Billing Act. You asked further whether a consumer in these circumstances is required to attempt to pursue the manufacturer's warranty where the manufacturer is located outside this country, because the selling merchant is no longer in business. Particularly, you inquire as to the effect of the interim bankruptcy or reorganization. Since these questions are somewhat related I will attempt to provide one narrative response which, hopefully, will answer all the specific questions you asked.

To begin, I would like to point out that the problem which you raised with your periodic statement is not, technically speaking, a billing error as defined by § 226.2(j) of Regulation Z. Therefore, your dispute with card issuer is not covered by § 226.14 of Regulation Z which implements the billing error resolution procedure of the Fair Credit Billing Act. Therefore, the guidelines for treatment of finance charges in cases of erroneous billings, set forth in § 226.14(b) of Regulation Z, do not apply.

However, it appears to staff that § 226.13(i) of Regulation Z, dealing with assertions of claims and defenses regarding credit card transactions, does apply to your circumstances. Under that section the customer may assert claims and defenses against the card issuer, which he may have regarding property or services purchases with a credit card, which he could have asserted against the merchant. There are certain limitations upon the cardholder's ability to assert such claims and defenses. The extension of credit must have occurred within the customer's home State (or within a hundred miles of the customer's home), and the customer must have made an attempt in good faith to obtain satisfaction from the merchant who sold the allegedly defective item. Additionally, the transaction must exceed $50 in amount. In your case, it appears that the dollar and distance limitations have been met and that thz only question remwining is whether you must go further in attempting to seek swtisfaction from the merchant or, alternatively, from the manufacturer.

In staff's view, § 226.13(i) does not require customers to file a claim in bankruptcy proceedings, nor does it require that you seek satisfaction from a manufacturer. The Act merely requires you to make a good faith attempt to resolve the dispute with the merchant.

In the position that you and the creditor find yourselves, staff believes the Regulation contemplates that, without a voluntary agreement, a court suit may be necessary to resolve the issues. Until such time as it is settled, judicially or otherwise, nothing in the Regulation prohibits the creditor from billing you for the amount plus any finance charges. Further, until the issue is settled, judicially or otherwise, in staff's view, the Regulation permits you to withhold the payment for the defective item and any finance charges which may have accrued, regardless of the method used in computing them, due solely to your refusal to pay the disputed amount.

Excerpts from FRB Letter of July 9, 1976, No. 1076, by D. Edwin Schmelzer, Acting Chief, Fair Credit Practices Section.

NUMBER 160

This is in response to your letter *** requesting clarification of the scope of the regulations to implement the Fair Credit Billing Act. You have asked whether the regulations are intended to cover transactions involving a "regular charge account" requiring periodic payments but for which no credit card is issued.

With the exceptions of §§ 226.4(i), 226.13(i), (j), (k), and (l), and 226.14(c), which apply only to credit card accounts, the Fair Credit Billing Act regulations apply to all "open end credit" as that term is defined in § 226.2(x), and to other than open end credit if it is consumer credit extended on an account by use of a credit card.

I assume that when you speak of a "regular charge account," you are referring to an account which is identical to most revolving credit card accounts except for the fact that no credit card is issued; the customer can make purchases from time to time on the account and can pay in full or in installments with a finance charge computed on any unpaid balance. This type of account falls within the definition of open end credit and is covered by the Fair Credit Billing Act regulations.

Excerpts from FRB Letter of October 31, 1975, No. 935, by Jerauld C. Kluckman, Assistant Director.

NUMBER 161

This is in reply to your letter *** in which you ask about the coverage of the Fair Credit Billing amendments of Regulation Z.

In general these regulations cover all open end creditors and all credit card issuers as defined in § 226.2(s) and § 226.2(x) of the regulation, and all credit other than open end which is extended by use of a credit card.

However § 226.4(i) and the amendments of § 226.13 are limited in their application to credit card transactions.

Any portion of the long form statement of borrower's rights as set out in § 226.7(a)(9) which is inapplicable to the open end credit plan involved may be deleted from the statement by the creditor. For instance, if a credit plan does not involve use of a credit card, the information set forth in Paragraph 7 of the statement may be excluded.

I suggest that if you have further questions regarding the particular problems of credit unions in complying with this regulation you get in touch with the National Credit Union Administration.

Excerpts from FRB Letter of October 31, 1975, No. 936, by Jerauld C. Kluckman, Assistant Director.

NUMBER 162

This is in response to your letter ***,regarding §§ 226.7(d)(5) and 226.14(a)(2) of the Fair Credit Billing amendments to Regulation Z.

You asked whether a creditor using the short from statement option under § 226.7(d)(5) must provide the customer with a copy of the long form statement set out in § 226.7(a)(9) if, prior to 30 days, the customer has agreed that the periodic statement was correct. Section 226.7(d)(5) requires a creditor to supply a copy of the § 226.7(a)(9) statement within 30 days of receipt of a customer's proper written notification of a billing error. Staff believes there are no exceptions to this requirement and does not believe the Board intended to provide an exception in § 226.14(a) by providing that a creditor need not follow the mandated steps for acknowledgement and resolution if the customer agreed the periodic statement was correct.

You also asked whether a creditor on a monthly billing cycle is allowed 90 days under § 226.14(a)(2) to resolve a billing error even though this period of time exceeds two complete billing cycles. *** Staff's opinion is that § 226.14(a)(2) requires a creditor to resolve a dispute by the end of the second complete billing cycle after receipt of the proper written notification of a billing error. A creditor with a monthly cycle, therefore, is required to resolve the dispute prior to the end of the 90-day maximum period if two complete billing cycles intervene between the creditor's receipt of the proper written notification and the end of the 90-day period.

Excerpts from FRB Letter of November 6, 1975, No. 943, by D. Edwin Schmelzer, Chief Attorney, Fair Credit Practices Section.

NUMBER 163

It is not clear from your letter whether you have a correct understanding as to how the grace period and adjustment of finance charges is intended to operate following the resolution procedure. If the creditor was totally wrong in billing an amount, then, obviously, the amount and any finance charges must be credited to the account and the grace period is irrelevant. If the creditor was only partially in error with regard to the amount and the customer has alleged the entire amount as being in dispute, the creditor must credit the account with the principal amount the customer does not owe and any finance charges on the entire amount which were imposed during the pendency of the error resolution procedure. Additionally, the creditor must present the customer with a written statement of how much is owed with regard to the item and must give the customer the normal time to pay before finance charges begin to accure, if the creditor customarily or by agreement allows a time for payment without additional finance charges being imposed. If the creditor was entirely correct with regard to the amount billed, no further grace period need be provided.

Excerpts from FRB Letter of November 7, 1975, No. 945, by Jerauld C. Kluckman, Assistant Director.

NUMBER 164

I have been asked to respond to your letter *** in which you asked for a clarification of the meaning of §§ 226.2(j)(2) and 226.2(cc) of Regulation Z. Your question is whether a simple written request by a customer for documentary evidence of an indebtedness which is defined as a billing error in § 226.2(j)(2), is enough to trigger the error resolution procedure of § 226.14.

It is staff's view that, although a reflection on a periodic statement of an item for which the customer requests documentary evidence is by definition a "billing error," a request for such evidence without an allegation of an amount in dispute would not constitute "proper written notification of a billing error" even

if all the other requirements of § 226.2(cc) are met. Thus, without a proper written notification of a billing error, the error resolution procedure of § 226.14 is not triggered.

Excerpts from FRB Letter of November 11, 1975, No. 946, by D. Edwin Schmelzer, Chief Attorney, Fair Credit Practices Section.

NUMBER 165

This is in response to your letter *** in which you asked for clarification of the meaning of § 226.14(b)(2) and (3) of Regulation Z. Read together, these sections require the creditor to credit the customer's account with any amounts which the customer does not owe and any finance, late payment or other charges imposed because of an erroneous billing. If there was no error in the billing of the item, the creditor need make no adjustments in these amounts.

However, the creditor is required to provide the customer with a written notice of how much is owed with regard to the disputed item promptly after resolution of the dispute. If an erroneous billing was made and the creditor normally or by credit agreement allows the customer a period for payment without incurring additional finance charges, the creditor must give that same number of days (but in no case less than 10) for payment of the disputed item after this notice is sent. In all other cases, where an erroneous billing has been made, finance charges may begin to accrue immediately after resolution of a dispute on accounts which do not provide for a free-ride period. This section is designed to effectuate the error resolution by providing that, to the extent possible, the customer is not to be financially prejudiced by using the procedure.

Excerpts from FRB Letter of November 19, 1975, No. 951, by Jerauld C. Kluckman, Assistant Director.

NUMBER 166

This is in reply to the letters received from you and your firm *** in which you raised questions concerning the Fair Credit Billing amendments to Regulation Z.

You ask whether § 226.14(e) requires creditors to delay making adverse credit reports with respect to cash advance accounts in which there is no free-ride period but which are billed on the same periodic statement as purchases in which there is a free-ride period. The regulation requires that the creditor shall make no adverse credit report on disputed amounts until the customer is given the customary time, or the time provided by the agreement (in no case less than ten days), for payment of undisputed amounts so as to avoid the imposition of additional finance charges, late payment charges, or other charges. However, in the situation you described, it would be permissible for the creditor to report the cash advance portion of the account as being delinquent after ten days and the purchases portion of the account as being delinquent after the normal free-ride period. There is no requirement that the creditor wait to report the cash advance portion until the free-ride period on the purchases portion has expired.

You also raised a question about the language of § 226.6(k)(3) which says that where forms "must be adapted to comply with the requirements of § 226.7(g)" a creditor need not alter or supplement his forms, but that complying forms must be in use no later than April 30, 1976. It is staff's opinion that § 226.6(k)(3) and § 226.7(g), when read together, mean that a creditor may impose reasonable requirements for receipt of payments under 226.7(g) which must be consistently applied by the creditor but that those requirements need not be disclosed on the periodic statement until April 30, 1976. This is to allow creditors a reasonable time to prepare the necessary forms.

Excerpts from FRB Letter of November 24, 1975, No. 954, by Jerauld C. Kluckman, Assistant Director.

NUMBER 167

This is in response to your letter of October 14, in which you asked a number of questions regarding the Fair Credit Billing amendments to Regulation Z. To the extent possible I will answer your questions in the order presented in your letter.

1. You ask about the import to be applied to footnote 1 under § 226.2(j)(3) and for some clarification of the difference between a "billing error" as defined in § 226.2(j)(3) and the assertion of claims or defenses involving disputes as to property or services purchased by use of a credit card as provided in § 226.13(i). Footnote 1 was intended to aid in drawing the distinction you seek. It was designed to make clear that the § 226.2(j)(3) billing error encompassed only those situations in which the merchant has failed to deliver goods or services in accordance with the agreement between the parties or in which the customer has not accepted the item. This might include, for example, situations in which it was apparent upon delivery that the item did not conform to the description of what was to be delivered—such as the wrong model or the wrong color. In such a situation it is appropriate to characterize the error as a *billing* error since the problem is that the customer is being billed for something for which no consideration or value was received.

The type of claim or defense which is assertable under § 226.13(i) is not limited, as you seem to suggest, to disputes regarding quality of goods or services, although quality disputes are included within the purview of this section. Any claim or defense the customer may have *vis a vis* the merchant recognizable under the law of the jurisdiction involved, except torts, may be asserted against the card issuer provided that the qualifying provisions of the section are met.

You ask further whether a customer, who elects to give proper written notification of a billing error and is dissatisfied with the resoluion, can then make a claim or assert a defense with regard to the same item when the dispute involves the nature of the goods purchased or the services rendered. The Board has attempted to define billing errors under § 226.2(j)(3) narrowly in an attempt to exclude disputes regarding the quality of items purchased by credit. For instance, it is staff's opinion that a mere written allegation that an item has become defective is not a billing error under § 226.2(j)(3) or a proper written notification under § 226.2(cc). Therefore, although a creditor may wish to correspond or otherwise respond to the customer, either in an attempt to settle the problem or as a matter of good customer relations, the provisions of § 226.14 would not be triggered thereby.

However, it should be pointed out that there may be many situations in which an occurrence can properly be categorized as a billing error and as the subject of a claim or defense to an attempt to collect. For instance, if a merchant failed to deliver an item at all, and the item was paid for by use of a credit card, the customer might correctly assert this as a § 226.2(j)(3) billing error and as a defense to an attempt to collect on the basis of a total failure of consideration. Although, as you point out, the line between the two concepts is often difficult to draw, a creditor may be well advised to avoid any potential liability by following the response procedure of § 226.14 whenever there is doubt.

2. You ask what sort of adjustment to the customer's account is required by § 226.14(b)(2) when the customer alleges that, for example, the date shown or the seller's name is in error. You ask, further, what sort of notification is required in such a case, when the amount proves to have been correct as shown but the description is in some way erroneous.

In such a case, it is staff's opinion that the transaction amount need not be adjusted, since there is no amount which the customer does not owe. However, any finance or other charges imposed for the period prior to the resolution of the dispute would need to be credited to the account.

The notice required by § 226.14(b)(3)(ii) would have to inform the customer of the amount owed. If the creditor normally gives the customer a period for payment of such an item without incurring additional finance charges, staff believes that a proper reflection of the item on a subsequent periodic statement, treating such item as a new transaction, would satisfy the requirements of § 226.14(b)(3)(ii).

3. You ask whether the written notification of corrections allowed by footnote 18 to be made on a subsequent billing statement can also be the medium for notification of the total amount the customer owes for purposes of § 226.14(b)(3). It is staff's opinion that such is acceptable if it meets the "promptness" requirements of § 226.14(b)(3)(i) and (iii). For instance, waiting two weeks after resolution of the dispute to put the information on the next periodic statement would not, in staff's opinion, be "prompt" within the meaning of the Regulation.

4. You ask whether § 226.7(g)(3) (which allows the creditor five days to credit payments received at locations other than the one designated by it for prompt crediting) and § 226.7(g)(5) (which allows the creditor up to five days to credit payments received on an average daily balance account until October 28, 1976, if, because of operational limitations, the creditor cannot credit payments as of the date of receipt) when read together allow the creditor a maximum of ten days to credit payments received at locations other than the one designated. In staff's opinion, if the creditor is subject to the limitations outlined in § 226.7(g)(5), until October 28, 1976, the crediting of payments to average daily balance accounts received at other than the designated location could be delayed up to ten days from actual receipt at such location.

5. Staff recognizes the potential inconsistency between the above opinion and the fact that § 226.7(g)(3) requires disclosure of only a potential five-day delay in crediting payments made at other than the designated location. However, in view of the fact that this inconsistency will exist for only six months to one year, after which time it will terminate, staff does not believe that the cost of changing forms twice is justified by the small potential benefit to consumers. The five-day period for crediting payments provided by § 226.7(g)(5) was instituted by the Board in response to a serious operational problem brought to the Board's attention in comments on earlier proposed drafts of the regulation. Ultimately, consumers will benefit by the full implementation of § 226.7(g) because of the prompt crediting of their payments required by the paragraph. The transition period of § 226.7(g)(5) is necessary to bring that benefit smoothly to full implementation.

***

10. You ask whether the caption "Send Inquiries and Payment To:" would satisfy the requirement of § 226.7(b)(1)(x). In staff's opinion it would so long as it is on a portion of the periodic statement which the customer can keep.

11. You ask whether it is permissible to print the statement set out in § 226.7(a)(9) on the reverse side of the periodic statement and, thus, send one to the customer with each periodic statement. Section 226.7(d)(4) specifically permits the statement to be sent more frequently than semiannually. Therefore, the system you propose is permissible under the Regulation.

You also ask whether the "NOTICE" legend which precedes the statement in § 226.7(a)(9) must be included on the periodic statement when the statement is sent with it semiannually (or more frequently). The "NOTICE" in § 226.7(a)(9) is required only as an initial open end credit disclosure. Therefore, in staff's opinion it need not appear on periodic statements.

12. You ask whether the location for receipt of payments referenced in § 226.7(g)(2)(ii) can be a post office box. Staff believes that this would be permissible.

13. You ask whether there is anything implicit in § 226.7(g) which would prohibit a creditor from specifying a location for receipt of payments and refusing payments at other locations which are familiar to the public. In staff's opinion there is nothing in the Regulation which would prohibit this, but a creditor may want to investigate State laws regarding refusal of tender of payment before instituting such a policy.

14. You ask whether the regulation, in § 226.13(k) imposes any penalty upon a card issuer for a merchant's failure to transmit a statement regarding a credit for a return within the prescribed time if the card issuer has informed the merchant of the requirements and has procedures reasonably adapted to prevent such a delay. Section 226.2(s) provides that a person who honors a card is a creditor for purposes of § 226.13(k). Therefore, it is staff's opinion that the merchant bears the liability for its own violation of § 226.13(k) whether or not the card issuer complies with the Regulation.

15. You ask whether § 226.13(k)(3) prohibits a card issuer from requiring its merchants to give a credit refund for returns. In staff's opinion, that section contains no such prohibition.

16. You ask whether § 226.13(l)(1)(ii) allows a card issuer to require a merchant to maintain a special or security account in order to protect itself in sales which require a "charge-back." You further ask whether the prohibition against requiring the merchant to maintain a deposit account means that there is a prohibition against requiring any form of account by the merchant with a card issuer where the account is utilized for the sale operation of the bank's credit card program. In staff's opinion, this section only prohibits the card issuer from requiring nonessential accounts for purposes unrelated to the credit card plan. Without meaning to limit or exhaustively discuss all the issues raised by this section, staff believes that a card issuer is not prohibited from requiring merchants to maintain accounts which are used for the purposes of making "charge-backs" and depositing and crediting sales vouchers. A fuller discussion of this matter is contained in the enclosed staff letter.

***

18. You ask whether a creditor may charge a fee for providing copies of documentary evidence of an indebtedness. In staff's opinion, nothing in the Act or Regulation would prohibit the creditor from doing this; however, such fees should be disclosed as another charge under § 226.7(a)(6).

Excerpts from FRB Letter of December 3, 1975, No. 965, by Jerauld C. Kluckman, Assistant Director.

NUMBER 168

This is in response to your letter of October 2 to *** who is out of the office, asking about the correct procedure for creditors to follow after the resolution of an alleged billing error pursuant to § 226.14(a) and (b) of Regulation Z implementing the Fair Credit Billing Act. Each of your questions will be answered in the following paragraphs.

1. Section 226.14(a)(2)(iii) requires that if a creditor determines that the initial periodic statement was correct, after conducting a reasonable investigation, the creditor must mail or deliver a written explanation or clarification to the customer explaining why the creditor believes the amount to have been correctly shown on the periodic statement. Additionally, § 226.14(b)(3)(i) requires that after or upon completion of the resolution procedures prescribed by § 226.14(a), where the initial periodic statement is determined to be without error, the creditor must promptly mail or deliver to the customer written notification of the amount owed with regard to the disputed item unless such notification is not required by paragraph (a) of this section.

The question is whether the creditor has to give written notification of the amount owed where the customer has agreed that the periodic statement is correct. It is the opinion of staff that where the customer has agreed that the periodic statement is correct, the creditor would not be required to notify the customer in writing of the amount owed. This section, however, would not eliminate the need for regular periodic statements on which the amount owed would be reflected after the dispute is resolved.

If it is determined that the initial periodic statement is in error with respect to the disputed item, then the notification required by § 226.14(a)(2)(i) or the explanation required by § 226.14(a)(2)(ii) may be made in combination with the notice required by § 226.14(b)(3)(ii) or (iii), whichever is applicable.

2. With respect to the notifications required under § 226.14(b)(3), there is no requirement that such notifications go out on a periodic billing statement. All that is required is a simple statement complying with paragraph (i), (ii), or (iii), whichever is applicable.

3. The notification of amount owed required by § 226.14(b)(3)(i) or (iii) must be made promptly. Because in each of those cases a periodic rate is being applied without a free-ride period, it is vital that notification of the customer be done as soon as possible after the alleged error is resolved. This is especially so under paragraph (i) where no finance charges need be adjusted during the dispute resolution period and they can continue to run until the customer makes payment. In either case, it is the opinion of staff that notification to the customer could be made on or with the next routinely sent periodic statement if sent within a few days. However, a delay of longer than a few days would probably run counter to the requirement of prompt notification and may require a notification earlier than with the next routine periodic statement.

4. If it is determined that the initial periodic statement is in error with respect to the disputed item, then under § 226.14(b)(3)(ii) the creditor must allow the customer the same free-ride period to pay the amount owed on the disputed item that the creditor customarily or by agreement allows to pay undisputed amounts. In this case, if the creditor normally allows a 30-day free-ride period even while advertising a 25-day free-ride period, the creditor would have to allow the full customer 30-day free-ride period. This time period would run from the billing date of the notification of the total amount due.

Notification of the amount due could be sent out on the next periodic billing statement and the free-ride period would in that instance begin on the billing date indicated on that periodic statement. Essentially, the item which was the subject of the error resolution process would be treated as a new transaction.

There is no requirement that the creditor, when notifying the customer of the total amount owed as required by § 226.14(b)(3)(ii), also indicate to the customer the applicability of the free-ride period for payment of that amount. The creditor simply must allow such a period.

In any case, if a creditor normally allows a free-ride period, the written notification of the total amount due must be mailed out at least 14 days prior to the end of the free-ride period as required in § 226.7(b)(2). This, however, does not mean the notification of amount due must be sent on a periodic statement. Any written notification could be used so long as the time limits for free-ride periods are complied with.

5. Creditors may continue to mail or deliver periodic statements which include disputed items provided that the creditor indicates on the face of the periodic statement as stated in § 226.14(b)(4) that payment of the amount in dispute is not required pending the creditor's compliance with the provisions of the section.

It is sufficient in complying with this requirement to print on the front of the periodic statement by computer or other means, including preprinting, a statement such as "There is no need to pay any amount believed to be in dispute." This statement need not identify the actual dollar amount in dispute, although it would be permissible for a creditor to indicate the amount in dispute if he wished to do so.

Finally, the statement required by § 226.14(b)(4) must appear on the face of that part of the periodic statement which the customer can retain.

Excerpts from FRB Letter of December 2, 1975, No. 975, by Jerauld C. Kluckman, Assistant Director.

NUMBER 169

Staff has given very careful consideration to your letter of November 6, in which you pointed out a problem which has arisen in some creditor's attempts to comply with the Fair Credit Billing amendments to Regulation Z.

You state that information regarding a customer's credit standing is sometimes provided from decentralized locations "as of" the last prior update of the customer's account status. This, you point out, may be done even though the creditor has received a proper written notification of a billing error at the central credit and collection location.

You suggest that the Board should amend § 226.14(e) to allow creditors some time to verify and correct, if necessary, any such reports to reflect the fact that a proper written notification of a billing error was received subsequent to the last update of the account.

Section 162(a) of the Act specifically prohibits the creditor or its agent from making adverse reports on a customer's credit standing after receipt of a notice of a billing error. The purpose of such a requirement is to assure that a customer's credit standing is not jeopardized by virtue of his exercising rights under the Act. While it may be rare that a delinquency report on a customer will be issued by the decentralized unit subsequent to the receipt of a proper written notification of a billing error at the central location, it seems that, when such actions do occur, they constitute exactly the problems the Act was attempting to address. Under these circumstances, a consumer, directing a billing inquiry to the proper location specified by the creditor and withholding payment of all or a

portion of the disputed amount, could have his credit standing jeopardized by a report made by the decentralized unit. It seems safe to assume that reports made by the decentralized unit would frequently be made when there is a current request for the information by a consumer reporting agency. Such an occurrence is likely when the customer would be applying for credit elsewhere. A delinquent report at this time would certainly be untimely. Consequently, staff does not believe that it would be appropriate to recommend to the Board the change you suggest.

As you point out in your letter, the Board in its regulations has provided that inadvertent reports made within two business days after receipt of the notice shall not be considered noncompliance if the creditor maintains procedures reasonably adapted to assure compliance. This provision was inserted to provide the creditor relief from inadvertently violating the Regulation when, for example, he sends a delinquent report out of one department at the same time a billing error notice is received by another department.

Staff will, of course, take your views into consideration and keep your suggestions in mind in dealing with credit reporting provisions of the Regulation.

Excerpts from FRB Letter of December 16, 1975, No. 978, by Frederic Solomon, Assistant to the Board of Director, Office of Saver and Consumer Affairs.

NUMBER 170

This is in response to your letter *** asking about the applicability of the Fair Credit Billing Act to several kinds of overdraft checking plans you propose. I will respond to each of the three plans you described individually in the following paragraphs.

1. The first plan is one in which the bank may provide for the inadvertent overdraft by honoring the check, collecting the funds from the customer, and charging him a service fee. Whether or not the bank, under this plan, is subject to the Fair Credit Billing Act and Regulation Z implementing that Act depends on whether or not the bank is a "creditor" as defined in § 226.2(s) of Regulation Z. A "creditor" is a person who in the ordinary course of business extends consumer credit which by agreement is payable in more than four installments or for which a finance charge is or may be imposed. The key phrase to consider in that definition regarding plan one, assuming payment in more than four installments is not permitted and all other conditions of the definition are met, is whether the service charge is a finance charge. Guidance for deciding whether a particular charge is a finance charge is found in § 226.4 of Regulation Z. Section 226.4(d) specifically exempts an overdraft charge from being considered a finance charge unless the payment of overdrawn checks and the imposition of such finance charges were previously agreed upon in writing. Consequently, assuming that the service charge and honoring of the checks in plan one were not previously agreed to in writing, when the bank merely honors an inadvertent overdraft and charges a service charge, since that charge is not a finance charge, the bank would not be a creditor. Thus, in the opinion of staff, the bank would not be subject to Fair Credit Billing and Regulation Z.

2. In the second plan, the bank proposes to establish a separate line of credit agreement whereby overdrafts would be charged either for the exact amount or in $50 or $100 increments to the line of credit and a loan established on the balance. As in plan one, the initial question is whether the bank is a creditor. Assuming a finance charge is imposed on the credit extended, and the remaining conditions in the definition of creditor are met, the bank in plan two would be a creditor as defined in § 226.2(s) of Regulation Z and therefore subject to the requirements of Regulation Z. However, Fair Credit Billing only applies to open end credit or credit extended by use of a credit card. Assuming no credit card is involved in plan two, the plan must be considered vis a vis the definition of open end credit in § 226.2(x) which provides:

> "'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 installments; (3) and a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance ..."

From the facts provided about plan two, it is difficult to know whether the three conditions in the definition of open end credit are met. Assuming they are met, the bank in plan two would be subject to Fair Credit Billing and Regulation Z.

3. The third plan is one in which the bank, using the Master Charge or BankAmericard, charges either the exact amount or $100 increments to the credit card account. There is little, if any, doubt that these two bank card plans involve open end credit. The question remains, however, whether the bank is a creditor in connection with the use of the plans. The term "creditor" is defined in § 226.2(s) of Regulation Z to specifically include card issuers for some requirements of Regulation Z. Assuming that the bank is a "card issuer," defined in § 226.2(l) to include agents of card issuers, plan three in the opinion of staff would also be subject to Fair Credit Billing and those requirements of Regulation Z specified in § 226.2(s).

Excerpts from FRB Letter of Jan. 26, 1976, No. 996, by D. Edwin Schmelzer, Acting Chief, Fair Credit Practices Section.

NUMBER 171

This is in response to your letter *** in which you requested staff's opinion of the applicability of the Fair Credit Billing provisions of Regulation Z to the payment terms offered by your company, a fuel oil retailer.

The Fair Credit Billing Act, which amends Truth in Lending, applies to all open end credit, as defined in § 226.2(x) of the Regulation. In order to come within this definition, the credit plan must generally involve three elements: (1) the customer may make purchases on credit or obtain loans from time to time on his account; (2) the customer may pay off his balance either in full or by installments; and (3) the creditor may periodically impose a finance charge on the unpaid balance in the customer's account. For purposes of the Fair Credit Billing provisions, any credit extended by use of a credit card would also come within this definition, even if the card plan does not contain all three elements of open end credit.

The first plan offered by your company involves a conventional 30-day account, with payment due not later than 30 days from the previous billing cycle. Amounts unpaid after this period are added to the customer's balance on the account and finance charges are periodically assessed on the outstanding balance until payment. The company furnishes monthly statements on all accounts with unpaid balances and apparently continues to provide goods and services on credit on these accounts. In sum, the plan appears to contemplate the periodic assessment of finance charges on unpaid balances, purchases on the accounts from time to time, and payments by the customer either in full or in installments. Based on these factors, we believe that this plan comes within the definition of open end credit and is subject to the Fair Credit Billing provisions.

The second credit plan you describe is the so-called Budget Plan, which allows customers to make ten equal monthly payments toward the estimated total cost for the heating season. You state that no finance charges are assessed on these accounts. This type of plan appears to us to be more analogous to a closed end installment transaction than to open end credit. Assuming that the customer cannot add subsequent purchases to his balance under this plan and that no finance charges may be imposed by the creditor from time to time on the oustanding balance, we believe that this plan would not constitute open end credit. Thus, assuming this plan does not involve the use of a credit card issued by the company, the provisions of Fair Credit Billing would not apply to it.

You also indicated that your customers may finance the purchase of heating equipment through *** and a local bank. A merchant who merely honors a credit card issued by another does not automatically become subject to the Fair Credit Billing Act, although certain disclosures pursuant to §§ 226.4(i) and 226.7(e) may be required if the merchant offers a discount to customers who pay in cash rather than by use of a credit card. In addition, if the merchant accepts returned merchandise bought with the credit card, the merchant is required by § 226.13(k) to notify the card issuer of the credit to the customer's account within seven business days. With the exception of these specific provisions, however, the Fair Credit Billing Act would not generally apply to a company when it simply accepts payment by means of a bank credit card.

Without more information, we cannot say definitely what effect a customer's financing of equipment sales through *** or a local bank would have on your responsibilities under the Truth in Lending Act. If the company is actually arranging the credit, within the meaning of § 226.2(h) of the Regulation, it would be required to make certain Truth in Lending disclosures. Even in such cases, however, it may well be that this financing constitutes other than open end credit, to which Fair Credit Billing would not apply.

Excerpts from FRB Letter of Jan. 28, 1976, No. 1000, by D. Edwin Schmelzer, Acting Chief.

NUMBER 172

This is in response to your letter *** concerning the credit reporting requirements contained in the Fair Credit Billing Act, P.L. 93-495 and § 226.14(a) of Regulation Z. Particularly, you asked whether creditor A who reports an amount as delinquent to creditor B and subsequently receives a proper written notification of a billing error concerning that amount is required to notify creditor B of the disputed amount.

The first proposed regulations implementing Fair Credit Billing did contain a requirement of subsequent notification to any third person who received a delinquency report when a proper written notification of a billing error was received after the delinquency report. The final regulation was specifically narrowed, except in the case of § 226.14(e)(2), to eliminate the requirement of subsequent reports to third persons who had received a delinquency report with the exception of third persons is the business of collecting and disseminating information relating to the creditworthiness of customers. That terminology was inserted to

make clear the intention to only have § 226.14(e)(3) apply to those reports made to credit bureaus. Thus, § 226.14(e)(3) of Regulation Z provides that only where a creditor has reported an amount as delinquent to a credit bureau is there any subsequent requirement to report to such agency that the amount is in dispute. There is no need to update reports made to other third persons, such as a report made by creditor A. concerning his experience with a customer to Creditor B who is not a credit bureau, except in the narrow case of § 226.14(e)(2) where the customer continues to dispute the amount after the completion of the error resolution process.

Since § 226.14(e) was specifically amended in the final regulations to clarify the íssue you raised, it is our opinion that a Board interpretation is not necessary.

Excerpts from FRB Letter of Feb. 19, 1976, No. 1006, by Jerauld C. Kluckman, Assistant Director.

Truth in Lending
INTERPRETATIONS OF REGULATION Z

SECTION 226.1

SECTION 226.101—USE OF "ANNUAL PERCENTAGE RATE" IN ORAL COMMUNICATIONS

Under § 226.1(a)(2), a stated purpose of the Truth in Lending Act and Regulation Z is to assure that every customer who has need for consumer credit is given meaningful information with respect to the cost of that credit so that he may readily compare the various credit terms available to him from different sources and avoid the uninformed use of credit. Under § 226.6(a), a creditor is required to make disclosures using certain prescribed terminology, including the "annual percentage rate." The question arises as to the propriety of a creditor quoting annual rates other than "annual percentage rate" in response to consumer inquiries about the cost of credit, where such other rates could not be used in an advertisement under the proscriptions of § 226.10.

The Truth in Lending Act and Regulation Z are intended to facilitate "shopping" between competitive credit plans. If a customer inquires about the cost of credit and the creditor responds by quoting an add-on or discount rate, he may mislead the customer since the use of such rates is prohibited in consumer dit advertising and such rates are significantly lower than the annual percentage rate which must be shown on the creditor's disclosure statement. The quotation of these rates can frustrate the stated purpose of the Act and prevent the customer from making an informed use of credit.

In response to any oral inquiry by a customer about the cost of credit, a creditor when quoting annual rates should use only those rates permitted to be used in advertisements under § 226.10. Irrespective of the method used by the creditor to compute finance charges, the annual rate of the creditor's total finance charges should be quoted only in terms of the "annual percentage rate."

6/29/73

SECTION 226.102—
(Rescinded effective 6/30/76)

SECTION 226.2

SECTION 226.201—LAY-AWAY PLANS AS EXTENSIONS OF CREDIT

Many vendors offer lay-away plans under which they retain the merchandise for a customer until the cash price is paid in full and the customer has no contractual obligation to make payments and may, at his option, revoke a purchase made under the plan and request and receive prompt refund of any amounts paid toward the cash price of the merchandise.

A purchase under such a lay-away plan shall not be considered an extension of credit subject to the provisions of Regulation Z.

5/5/69

SECTION 226.202—SECURITY INTEREST—CONFESSIONS OF JUDGMENT—COGNOVIT NOTES

Under § 226.2(gg) "security interest" is defined to include confessed liens whether or not recorded and, in general, to include any interest in property which secures payment or performance of an obligation. In certain transactions involving a security interest, under § 226.9 the customer has a right of rescission.

In some of the States, confession of judgment clauses or cognovit provisions are lawful and make it possible for the holder of an obligation containing such clause or provision to record a lien on property of the obligor simply by recordation entry of judgment; the obligor is afforded no opportunity to enter a defense against such action prior to entry of the judgment.

Since confession of judgment clauses and cognovit provisions in such States have the effect of depriving the obligor of the right to be notified of a pending action and to enter a defense in a judicial proceeding *before* judgment may be entered or recorded against him, such clauses and provisions in those States are security interests under § 226.2(gg) and for the purposes of § 226.7(a)(7), § 226.8(b)(5), and § 226.9. This is the case even if the judgment cannot be entered until after a default by the obligor.

Confession of judgment clauses and cognovit provisions which, by their terms, exclude a lien on all real property which is used or is expected to be used as the principal residence of the customer, would not bring a transaction under the provisions of § 226.9.

5/26/69

SECTION 226.203—OPEN END CREDIT DISTINGUISHED FROM OTHER CREDIT

The fundamental qualifications for "open end credit" under § 226.2(x) is that consumer credit be 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 or indirectly from the creditor, as the plan may provide; (2) the customer has the privilege of paying the balance in full or in installments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. Under an open end credit account plan, it is contemplated that there will be or may be repetitive transactions on a revolving basis.

In certain cases, a form of contract or note relating to a single transaction provides that the finance charge be computed from time to time by application of a rate to the unpaid balance and stipulates required minimum periodic payments. However, the obligor has the privilege of making larger and more frequent payments than stipulated or paying the obligation in full at any time without penalty. The question arises as

to whether the creditor should make disclosures in such circumstances under § 226.7 for open end credit accounts or under § 226.8 for credit other than open end.

Although the terms of such a contract or note meet the second and third requirements for such a plan, they do not meet the first of such requirements nor the basic qualification that consumer credit be extended on an account pursuant to a plan. Therefore, disclosures in this case are required to be made under § 226.8.

5/26/69

SECTION 226.3

SECTION 226.301—AGRICULTURAL PURPOSES—WHEN EXEMPT FROM THE REGULATION

Under § 226.3(a), the Regulation does not apply to "Extensions of credit to organizations, including governments, or for business or commercial purposes, other than agricultural purposes." The definition of "organization" in § 226.2(y) includes a corporation, trust, estate, partnership, cooperative, or association as well as governmental entities. The question arises as to whether the Regulation applies to extensions of credit to organizations, including governments, for agricultural purposes.

Extensions of credit to organizations, including governments, for agricultural purposes are exempt from the Regulation.

SECTION 226.302—CREDIT FOR BUSINESS OR COMMERCIAL PURPOSES—MORE THAN FOUR FAMILY UNITS

Under § 226.3(a), extensions of credit for business or commercial purposes, other than agricultural purposes, are not subject to Regulation Z. The question arises as to whether an extension of credit relating to a dwelling (as defined in § 226.2(v)) which contains more than four family housing units is an extension of credit for business or commercial purposes.

Credit extended to an owner of a dwelling containing more than four family housing units for the purpose of acquiring, financing, refinancing, improving, or maintaining that dwelling is an extension of credit for business or commercial purposes.

1/28/70

SECTION 226.4

SECTION 226.401—SERVICE CHARGES ON ACCOUNTS NOT PAID WITHIN A GIVEN PERIOD OF TIME

Some vendors bill their customers for property or services purchased under the terms of a credit plan which requires that the full amount of each billing be paid within a stipulated period after billing, with no privilege of paying in installments. If a bill is not paid within that stipulated period of time, the vendor imposes a service charge periodically on the unpaid balance until the account is paid in full. The question arises as to whether Regulation Z applies to such transactions.

When in the ordinary course of business a vendor's billings are not paid in full within that stipulated period of time, and under such circumstances the vendor does not, in fact, regard such accounts in default, but continues or will continue to extend credit and imposes charges periodically for delaying payment of such accounts from time to time until paid, the charge so imposed comes within the definition of a "finance charge" (§ 226.2(w)) applicable in each case to the amount of the unpaid balance of the account. Under such circumstances the credit so extended comes within the "open end credit" in § 226.2(x), the vendor is a creditor as defined in § 226.2(s), and the disclosures required for open end credit accounts under § 226.7 shall be made.

4/22/69

SECTION 226.401—TERM OF INSURANCE COVERAGE

Under § 226.4(a)(5) and (6) certain disclosures of insurance premium costs, if applicable, are required. The question arises as to whether such amounts of cost disclosed must include the cost of insurance for the full term of the transaction.

Under § 226.4(h) the cost of insurance for the full period of insurance coverage which the creditor will require shall be disclosed if the cost of the insurance premium is required to be included in the finance charge. However, if the cost of insurance is not required to be included in the finance charge, the cost to be disclosed need only be the cost of premiums for the term of the initial policy or policies written in connection with the transaction, accompanied by a statement of the type of insurance and the term thereof.

5/5/69

SECTION 226.403—DISCLOSURE OF COST OF PROPERTY INSURANCE WHEN NOT OBTAINABLE FROM OR THROUGH THE CREDITOR

In many cases a creditor requires insurance against loss or damage to property or liability arising out of its use but such insurance is not obtainable from or through him. The question arises under § 226.4(a)(6) as to whether such a creditor must make any disclosures to avoid having to include the insurance premium in the finance charge.

Irrespective of whether such insurance may be obtained from or through the creditor, if the creditor requires property insurance and wishes to exclude the cost from the finance charge, he is required to state clearly and conspicuously to the customer that he may choose the person through which the insurance is to be obtained. However, if the insurance is not obtainable from or through the creditor, he is not required to disclose the cost of that insurance, unless, of course, the premiums are included in the "amount financed," in which case it would have to be disclosed under § 226.8(c)(4) or (d)(1), as the case may be.

5/26/69

SECTION 226.404—PREMIUMS FOR VENDOR'S SINGLE INTEREST INSURANCE REQUIRED BY CREDITOR

The question arises whether charges or premiums for single interest insurance (Vendor's Single Interest Insurance) written in connection with a credit transaction may be excluded from the finance charge under § 226.4(a)(6) if the insurer waives subrogation.

If the insurer waives all right of subrogation against the customer in a single interest policy of insurance against loss of or damage to property (which may include coverage for skip, concealment, conversion, and embezzlement) written in connection with a credit transaction, and the creditor complies with the requirements of § 226.4(a)(6), charges or premiums for such insurance may be excluded from the amount of the finance charge on that transaction. However, if the insurer does not so waive subrogation in such policy of insurance, the charges or premiums shall be included in the finance charge.

1/28/70 *(Supersedes interpretation § 226.404 issued 8/1/69)*

SECTION 226.405—PROPERTY INSURANCE WRITTEN IN CONNECTION WITH A TRANSACTION—OBTAINED FROM OR THROUGH THE CREDITOR

Footnote four to § 226.4(a)(6) specifies that a policy of insurance against loss or damage to property or liability arising out of its use is not considered to be "written in connection with" a transaction when it "... was not purchased by the customer for the purpose of being used in connection with that extension of credit." Therefore, whenever such a policy is purchased by the customer for the purpose of being used in connection with a specific extension of credit, it is insurance "written in connection with" that transaction.

If the customer elects to purchase such insurance otherwise than from or through the creditor, the creditor is not required to disclose the cost of the insurance or include the premium in the finance charge. However, if the cost of such insurance is to be financed through the creditor, the premiums must be included in the "amount financed" and disclosed under § 226.8 (c)(4) or (d)(1), as the case may be.

9/11/69

SECTION 226.406—SELLER'S POINTS AND DISCOUNTS UNDER REGULATION Z

Section 226.4(a) of Regulation Z includes in the finance charge any charge "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. ..." The question arises as to the proper treatment of discounts paid by the seller, including points imposed on the seller by the lender in connection with a real estate transaction.

Under the general rule in § 226.4(a), any such discount, to the extent it is passed on to the buyer through an increase in the selling price, must be included in the finance charge. However, as a practical matter, it may be difficult to determine whether or not a discount paid by the seller in connection with a real estate transaction has been, in fact, passed along to the customer as a part of the purchase price of the property. The same situation may exist in other cases, for example, those in which the creditor sells at a discount obligations payable in more than four installments.

The Board has concluded that in any such transaction coming within its administrative enforcement authority, where seller's points or discounts were, in fact, passed along to the customer or buyer and the amount thereof was not disclosed as a finance charge, the Board will take such action as may be appropriate in the circumstances. However, it will not attempt to prescribe rules creating a presumption that all discounts or points are passed on to the customer or buyer and hence must be included in the finance charge in any particular class of transaction. On the other hand, the inclusion of seller's points or discounts in the finance charge will be acceptable to the Board as a correct disclosure under Regulation Z.

This position relates only to the Board's administrative enforcement procedures and it is not intended in any way to restrict or prejudice the rights of any customer or buyer to bring an action under sections 130 and 131 of the Act where he has reason to believe he is or was required to pay directly or indirectly a finance charge imposed directly or indirectly by the creditor of the transaction and the amount of that finance charge was not disclosed to him.

10/23/70

SECTION 226.407—CHARGES FOR MEMBERSHIP IN OPEN END CREDIT PLAN

A credit card issuer charges the cardholder an annual fee for membership in the credit plan and for issuance of a credit card for use in conjunction with the plan. The payment of the fee is required as a condition of membership in the plan, whether or not the cardholder uses his card for the purpose of obtaining credit. The question arises whether these fees are finance charges under § 226.4(a) of Regulation Z.

Since such fees are imposed as a qualification of membership in the plan and for the issuance of a credit card, and not as incident to or as a condition of any specific extension of credit, they do not fall within the definition of a "finance charge" under § 226.4(a) of Regulation Z.

8/12/71

SECTION 226.5

SECTION 226.501—USE OF RANGES OR BRACKETS TO DETERMINE PERIODIC RATE OF FINANCE CHARGE ON OPEN END ACCOUNTS

Section 226.5(a)(1) of Regulation Z, in effect, gives a creditor the option in certain circumstances of stating (1) two or more separate annual percentage rates (e.g., the rate on a $700 balance might be stated as 18% on balance to $500 and 12% on balance over $500), or (2) a single annual percentage rate determined by the "quotient method" resulting from applying

the rates to a total balance (e.g., in the example above, an annual percentage rate of 16¼% on a $700 balance).

Section 226.5(a)(2), which relates to the use of ranges or brackets to compute periodic finance charges, does not prevent a creditor who uses such brackets from exercising the options referred to in § 226.5(a)(1).

4/2/69

SECTION 226.502—ANNUAL PERCENTAGE RATE ON SINGLE ADD-ON RATE TRANSACTIONS

The application of a single add-on rate to transactions of varying maturities, when converted to an annual percentage rate determined by the actuarial method, results in minor variations. Such annual percentage rate variations on maturities up to 60 months are so insignificant that separate computations are unwarranted.

The question arises as to whether a creditor may disclose a single annual percentage rate on all such transactions based upon the highest rate which will arise from the application of the same single add-on rate to each of such transactions.

When the same add-on rate is applied to all transactions within a range of maturities up to 60 months, and provided that all payments on each transaction are equal in amount and due at equal intervals of time within the limits provided by § 226.5(d), a single annual percentage rate may be disclosed in which case it shall be the highest annual percentage rate that may be applicable to any such transactions.

5/26/69

SECTION 226.503—MINOR IRREGULARITIES—MAXIMUM IRREGULAR PERIOD LIMITS

Section 226.5(d) specifies certain minimums in determining what minor irregularities in first payment periods may be disregarded in determining the annual percentage rate. The question arises 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 payments 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 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 INSTALLMENT CONTRACT

In some instances involving an installment 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 installment 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 downpayment 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

SECTION 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 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) and if they were regular in amount or time, as applicable, provided that the transaction to which they relate is otherwise payable in equal installments 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 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, either or both of the following:

(i) The amount of one 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 five nor more than 12 days for an obligation otherwise payable in weekly installments, not less than ten nor more than 25 days for an obligation otherwise payable in biweekly or semimonthly installments, or not less than 20 nor more than 50 days for an obligation otherwise payable in monthly installments.

(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 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, either or both of the following:

(i) The amount of one 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 six nor more than ten days for an obligation otherwise payable in weekly installments, not less than 12 nor more than 21 days for an obligation otherwise payable in biweekly or semimonthly installments, or not less than 25 nor more than 42 days for an obligation otherwise payable in monthly installments.

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 of payment period involved in the minor irregularity.

9/11/69

SECTION 226.506—DAILY PERIODIC RATE; COMPUTATION OF THE ANNUAL PERCENTAGE RATE

Under § 226.5(a)(1)(ii), (3)(i), and (3)(ii), the quotient used in computing the annual percentage rate in open end credit accounts must be multiplied "by the number of billing cycles in a year." The question arises as to the method which should be used to compute the annual percentage rate under those sections where a daily periodic rate or rates is used.

In any open end credit account to which the provisions of § 226.5(a)(1)(ii) or 226.5(a)(3)(i) apply, where all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined (1) by dividing the total finance charge by the average of daily balances and multiplying the quotient by the number of billing cycles in a year, or alternatively (2) by dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

In any open end credit account to which the provisions of § 226.5(a)(3)(ii) apply, where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase "sum of the balances" in footnote 5a shall also mean the "average of daily balances."

6/1/73

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 § 226.5 other than through inadvertence does not comply with requirements.

4/2/69

SECTION 226.602—(Rescinded effective 3/1/74)

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(b) 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.

4/2/69

SECTION 226.605—(Rescinded effective 3/1/74)

SECTION 226.606—MODIFICATION OF SEMIANNUAL STATEMENTS PURSUANT TO STATE LAW

(a) Sections 226.7(a)(9) and 226.7(d)(5) prescribe statements regarding customers' rights and creditors' responsibilities under certain sections of the Regulation. These statements contain specific references to the "Federal Truth in Lending Act," "Federal Fair Credit Billing Act," and the "Act."

(b) Certain States have adopted, or intend to adopt, regulations or statutes identical to the amendments to Regulation Z adopted by the Board on September 15, 1975, for the purpose of implementing the Fair Credit Billing Act. The question has arisen whether the statements prescribed by §§ 226.7(a)(9) and 226.7(d)(5) may be modified under these circumstances to include a reference to the State law immediately following the relevant reference to the Federal law, or whether separate statements are required under both the State law and Federal laws.

(c) In the circumstances described above, it is permissible for a creditor to modify the statements prescribed by §§ 226.7(a)(9) and 226.7(d)(5) in the form of a reference to the relevant State law by name. Such a disclosure, if made immediately following the relevant reference to the titled Federal law in substantially the following manner: "and the [insert the name of the State and the State law involved]," is permissible under Regulation Z and any State law requiring such a disclosure is not inconsistent with the Act or Regulation within the meaning of § 226.6(b). It is similarly permissible to substitute "these Acts" for the words "the Act" where it appears in the statement required by § 226.7(a)(9).

SECTION 226.7

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

Section 226.7(b)(l)(iv) 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 § 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 is incorporated into section 226.7(c) effective June 1, 1973, and is revoked effective that date.

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

Section 226.7(b)(1)(viii) 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 or rates. 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 one or more daily periodic rates, and the question arises as to how the balance on which the finance charge was computed should be disclosed in such circumstances.

If a single daily periodic rate is imposed, the balance to which it is applicable may be stated in any of the following ways:

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

(ii) A balance for each day in the billing cycle on which the balance in the account changes; or

(iii) The sum of the daily balances during the billing cycle; or

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

If two or more daily periodic rates may be imposed, the balances to which the rates are applicable may be stated in accordance with (i) or (ii) above or as two or more average daily balances, each applicable to the daily periodic rates imposed. For example, if the creditor imposes one daily periodic rate on balances up to $500 and another daily periodic rate on balances over $500, the creditor would show average daily balances of $500 and $200 in an account which had a $700 balance for the entire billing cycle. If the average daily balances are stated, the creditor shall state (on the face of the periodic statement, on its reverse side, or on an enclosed supplement) wording to the effect that the finance charge is or may be determined by (1) multiplying each of the average daily balances by the number of days in the billing cycle, (2) multiplying each of the results by the applicable daily periodic rate, and (3) adding these products together.

12/27/74 *(Supersedes interpretation § 226.703 issued 6/21/72 and prior interpretation § 226.703 issued 5/5/69)*

SECTION 226.704 is incorporated into section 226.5(a)(3) effective June 1, 1973, and is revoked effective that date.

SECTION 226.705—OPEN END CREDIT—CHANGE IN THE METHOD OF DETERMINING THE BALANCE ON WHICH FINANCE CHARGES ARE COMPUTED

The creditor of an open end credit account plan desires to change his method of determining the balance on which finance charges are computed from a method in which payments and credits made during the billing cycle are not deducted in determining such balance to a method in which such payments and credits are deducted in determining such balance. This change results in a reduction in finance charges to the customer, where full payment of the account is deferred. The question arises whether notice of such change is required to be sent to customers of open end credit accounts under § 226.7(f), since that section also provides that prior notice is not required if the only change is a reduction in the "periodic rate or rates, or in any minimum, fixed, check service, transaction, activity, or similar charge applicable to the account."

Where a creditor changes his method of determining the balance on which finance charges are computed from a method in which payments and credits made during the billing cycle are not deducted in determining such balance, to a method in which such payments and credits are deducted in determining such balance, § 226.7(f) requires no prior notice of such change in terms, provided no other changes in terms applicable to the account are made simultaneously which would require § 226.7(f) notification.

7/29/71

SECTION 226.706—OPEN END CREDIT—ALLOCATION OF PAYMENTS

Section 226.7(a)(2) provides that before the first transaction is made on any open end credit account, the creditor must disclose "the method of determining the balance upon which a finance charge may be imposed." Section 226.7(b)(l)(viii) requires the creditor to disclose on the periodic statement "the balance on which the finance charge was computed, and a statement of how that balance was determined." The question is raised whether these provisions require a creditor to provide a description of the manner in which payments or other credits are applied to various portions of the balance or balances on which finance charges are computed.

In disclosing the method of determining the balance(s) upon which finance charges are computed, it is not necessary to show the method of allocating payments or other credits. For example, explanation of the manner in which payments or credits may be applied to late charges, overdue balances, finance charges, insurance premiums or other portions of balances is not required. Similarly, explanation of the method of allocating such payments between cash advance and purchase portions of the account is not required. Such explanations in many cases involve lengthy and complex descriptions which may unduly complicate disclosures.

Explanation of the allocation method may be made by creditors where it can be done in conformity with § 226.6(c) which authorizes additional information or explanations as long as they are not stated, utilized, or placed so as to mislead or confuse the customer or contradict, obscure, or detract attention from the required disclosures.

6/21/72

SECTION 226.707—DISCLOSURES—VARIABLE PERIODIC RATES

Under the terms of some open end credit plans the periodic rates of finance charges and corresponding annual percentage rates are tied to a fluctuating base rate, for example, the "prime rate." Consequently, both the periodic rates and annual percentage rates are tied to a fluctuating base rate, for example, the "prime rate." Consequently, both the periodic rates and annual percentage rates may change from time to time with changes in the base rate. The question arises as to the proper disclosure, if any, which should be made under § 226.7(a)(4), § 226.7(b)(1)(v), § 226.7(b)(1)(vi), § 226.7(f), and § 226.10(c)(4) in connection with such plans.

Where any creditor's open end credit plan provides that the account is subject to variations in any periodic rate of finance charge, the creditor need not comply with § 226.7(f) with respect to any prospective change in any periodic rate or corresponding annual percentage rate applicable to the account, *provided* that in connection with the disclosures made pursuant to paragraph 226.7(a)(4) the creditor has disclosed that such rates are subject to change, the conditions under which such rates may be changed, and, if applicable, the maximum and minimum limits of such rates. The requirements of § 226.7(b)(1)(v) and § 226.10(c)(4) may be complied with by similarly disclosing the method of computing the periodic or annual percentage rates which are subject to variation. In disclosing an annual percentage rate or rates under § 226.7(b)(1)(vi) where there have been variations during the billing cycle, the computations as specified in § 226.5(a)(1)(ii), § 226.5(a)(2), § 226.5(a)(3)(i) or § 226.5(a)(3)(ii), as applicable, should be used.

11/2/72

SECTION 226.708—TIMING AND MODIFICATION OF SEMIANNUAL STATEMENTS

Sections 226.7(d)(1) through 226.7(d)(4) set out the method by which the statement required by § 226.7(a)(9) is to be provided to customers on a semiannual basis. Section 226.7(d)(5) provides for a shorter statement which, as an alternative to the provisions of §§ 226.7(d)(1) through 226.7(d)(4), may, under certain conditions, be provided with each periodic statement.

The question has arisen of when the first statement, either the longer statement required by § 226.7(a)(9) or the alternate shorter statement under § 226.7(d)(5), must be provided under § 226.7(d). Creditors must mail or deliver one or the other of these statements, pursuant to § 226.7(d), not later than seven months after October 28, 1975. In determining when to send the first statement pursuant to § 226.7(d), the initial statements prescribed by § 226.7(a)(9) which are sent to customers with accounts in existence on October 28, 1975, pursuant to § 226.7(i), may not be considered a statement sent for purposes of § 226.7(d).

A second question has arisen regarding the timing of disclosures should a creditor change practices and provide the statement under § 226.7(d)(5) instead of the longer statement prescribed in § 226.7(a)(9). The same question has arisen with respect to the opposite case, i.e., when a creditor first makes disclosure under § 226.7(d)(5) and subsequently decides to make disclosure of the statement prescribed by § 226.7(a)(9) semiannually. If a creditor first discloses the § 226.7(a)(9) statement semiannually and subsequently decides to use the § 226.7(d)(5) alternative, the first statement which must be provided pursuant to § 226.7(d)(5) must be mailed or delivered not later than the time that the next § 226.7(a)(9) statement would have been required had no change in the creditor's practice occurred. If a creditor first chooses to make disclosure pursuant to § 226.7(d)(5) and subsequently decides to provide the longer statement prescribed in § 226.7(a)(9) semiannually, the creditor must mail or deliver such longer statement to those customers receiving periodic statements (not later than the mailing or delivery of such periodic statements) pursuant to § 226.7(b) for the billing cycle immediately subsequent to the billing cycle for which the last statements were mailed or delivered pursuant to § 226.7(d)(5). The timing of mailing or delivery of § 226.7(a)(9) statements on a semiannual basis subsequent thereto is to be determined in accordance with § 226.7(d)(1), (2), (3) and (4).

A further question has arisen whether a creditor may delete portions of the statement prescribed in § 226.7(d)(5) which are inapplicable to its particular credit plan as in the case of the statement prescribed by § 226.7(a)(9). In line with the general policy of the Truth in Lending Act and Regulation Z which attempt to avoid disclosures which might be confusing to consumers, any portion of the § 226.7(d)(5) statement which are inapplicable to a credit plan may be deleted from the § 226.7(d)(5) statement by the creditor of that plan.

The question has also arisen whether references to the "creditor" in the statement prescribed by § 226.7(d)(5) may be altered or modified as is permitted with regard to the statement prescribed by § 226.7(a)(9). Such alteration or modification is permissible; wherever the word "creditor" appears or is referred to in the statement prescribed by § 226.7(d)(5), the creditor may substitute appropriate references, such as "company," "bank," "we" or a specific name.

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).

4/26/69

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(c)(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 a "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; and

(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 to 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

Any renewal of an extension of credit providing for payment of the full principal sum on a specified date shall not be considered a refinancing under § 226.8(j), and no disclosures need be made in connection with such renewal, provided:

(i) All disclosures required under this Part were made in connection with the original extension of credit or a prior renewal thereof;

(ii) The amount of the renewal does not exceed the amount of the unpaid balance plus any accrued and unpaid finance charge;

(iii) The annual percentage rate (or rates) previously disclosed is not increased; and

(iv) The period for which renewal is made does not exceed by more than four days the period of the extension of credit for which disclosures were made.

In instances in which disclosures are required to be made and renewal is made by mail, the creditor may not know whether the customer will reduce his 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, at the creditor's option, 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 for $1,000 at 7% is proposed to be renewed for $1,000 at 8% for three 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 with a finance charge of $10.

1/28/70 *(Supersedes interpretation § 226.811 issued 8/1/69)*

SECTION 226.812—ADVANCES UNDER OPEN END REAL ESTATE MORTGAGES FOR AGRICULTURAL PURPOSES

Under § 226.8(p) disclosures are permitted in connection with certain extensions of credit for agricultural purposes which may involve advances under an open end real estate mortgage or similar lien. Section 226.8(j) in part treats advances for agricultural purposes under an open end real estate mortgage or similar lien. The question arises as to the respective application of these paragraphs to such advances.

If an extension of credit involving multiple advances, whether or not under an open end mortgage, meets the tests of § 226.8(p), disclosures need only be made prior to consummation of the credit transaction and need not be made at the time of each individual advance, even though such advance for agricultural purposes may not meet the tests in § 226.8(j). Conversely, extensions of credit for agricultural purposes involving advances under an open end real estate mortgage or similar lien which do not meet the tests for disclosure under § 226.8(p) are subject to the relevant provisions of § 226.8(j) dealing with such advances.

11/6/69

SECTION 226.813—DISCLOSURES ON MULTIPLE ADVANCE LOANS

In connection with construction and other multiple advance loans under § 226.8(i), which are payable in a single sum or permanently financed by the same creditor at maturity of the construction phase with interest only payable up to such maturity, and in which either the amount or date of an advance is not determinable, the question arises whether a method might be utilized to estimate the information to be disclosed under § 226.8(b)(2) and (3) and (d)(3).

In such cases, at the creditor's option, required information may be estimated and disclosed as follows:

(1) The following mathematical equations based upon assumed continuous advances may be utilized in estimating the amount of the interest component of the finance charge and the annual percentage rate by substituting the appropriate numerical amounts for the following symbols in the equations:

(i) Symbols

L = Amount of loan commitment.
r = Stated annual interest rate expressed as a decimal figure.
n = Number of interest payments to be made to maturity.
m = Number of interest periods (unit-periods) in one year.
P = Total amount of any prepaid finance charge under § 226.8(e).
B = Amount of any required deposit balance under § 226.8(e).

(ii) If interest is computed from the date of each advance on only the amounts advanced:

$$\text{Estimated annual percentage rate} = \frac{nrL + 2mP}{n(L - 2P - 2B)}$$

$$\text{Estimated interest finance charge} = \frac{nrL}{2m}$$

(iii) If interest is computed on the full amount of the commitment without regarding for the dates of disbursements or actual amounts disbursed:

$$\text{Estimated interest finance charge} = \frac{2nrL + 2mP}{n(L - 2P - 2B)}$$

$$\text{Estimated interest finance charge} = \frac{nrL}{m}$$

(2) If the equations under subdivision (ii) of paragraph (1) are utilized, the amounts of any required interest payments during the construction phase may be omitted in making the disclosure required under § 226.8(b)(3); however, if the equations under subdivision (iii) of paragraph (1) are utilized, then the amount of each scheduled interest payment shall be disclosed as required under § 226.8(b)(3).

(3) In the case of a combination construction loan and permanent financing provided by the same creditor:

(i) The amount of interest finance charge to be paid prior to the due date of the first amortization payment shall be estimated as prescribed under subdivision (ii) or (iii) of paragraph (1) as the case may be and shall be treated as prepaid finance charge for computational purposes; and

(ii) Estimation of the annual percentage rate shall be made without regard to the number of interest only payments to be made, assuming the first payment period to be that interval between the date the finance charge begins to accrue and the date the first amortization payment is due.

(4) Disclosures made in accordance with this interpretation, when made along with the other disclosures required under § 226.8(b) and (d), shall constitute "all other material disclosures required under this Part" referred to under § 226.9(a):

Example I

A $20,000 construction loan commitment on which the precise dates or amounts of advances are not determinable. The obligation bears a stated 6% interest rate and interest is to be paid monthly on the amounts advanced, and the total of the amounts advanced under the commitment plus any unpaid interest is due and payable at the end of nine months from the date the finance charge begins to accrue. There is a loan fee of 1% ($200), but there is no required deposit balance. Substituting these terms for the symbols, the equations become:

$$\frac{(9 \times .06 \times 20{,}000) + (2 \times 12 \times 200)}{9 \times [20{,}000 - (2 \times 200)]} =$$

.0884 or 8.84% or 8¾% estimated annual percentage rate.

$$\frac{9 \times .06 \times 20{,}000}{2 \times 12} =$$

450 or $450 estimated interest finance charge component of the finance charge.

If the terms stated in the example were changed so that interest would be computed on the full amount of the commitment from the date the finance charge begins to accrue without regard for the dates of disbursements or actual amounts of funds disbursed, the equations under (iii) above become:

$$\frac{(2 \times 9 \times .06 \times 20{,}000) + (2 \times 12 \times 200)}{9 \times [20{,}000 - (2 \times 200)]} =$$

.1497 or 14.97% or 15% estimated annual percentage rate.

$$\frac{9 \times .06 \times 20{,}000}{12} =$$

900 or $900 estimated interest finance charge component of the finance charge. This interest would be payable in nine monthly payments of $100 each.

Example II

A $20,000 construction loan followed by permanent financing in same amount. Six per cent interest. One point loan fee. Nine months to maturity of construction phase. Nine months payments of interest only during construction phase. Twenty-year maturity on permanent financing to be amortized in 240 equal monthly payments including interest and principal.

From mortgage amortization tables:

Amortization of a $20,000 6% 20-year loan in 240 equal monthly payments including interest and principal requires each monthly payment to be $143.29.

Total of 240 payments = 240 x $143.29 =	$34,389.60
Subtract amount of loan principal	$20,000.00
Interest finance charge on permanent financing	$14,389.60
Add: Estimated interest finance charge on construction phase (pursuant to subdivision (ii))	450.00
Add: Loan fee one point	200.00
Estimated finance charge	$15,039.60

(If the interest on the construction phase is computed on the full amount of the commitment for the full time to maturity without regard for the dates of disbursements or actual amounts disbursed pursuant to subdivision (iii), the estimated interest finance charge for the construction phase would be $900.00 which would result in a total estimated finance charge of $15,489.60).

Loan fee one point prepaid finance charge	$ 200.00
For computational purposes consider interest to be paid on construction phase as prepaid (not to be disclosed as prepaid)	$ 450.00
Total amount treated as prepaid finance charge for computational purposes	$ 650.00

	Computational Purposes	Disclosure Purposes
Amount of loan	$20,000	$20,000
Deduct total of estimated finance charge treated as prepaid	$ 650	
Deduct actual amount of prepaid finance charge		$ 200
Estimated amount financed for computational purposes	$19,350	
Amount financed to be disclosed		$19,800

Adjust first payment period (period of construction loan plus period from maturity date of construction loan to due date of first amortization payment) by dividing the period of the construction loan by two and adding the period of time between the maturity date of the construction loan and the date the first amortization payment is due.

9 months divided by 2 =
4½ months plus 1 month =
5½ months

From Appendix A (page A2) of Volume I of the Board's Annual Percentage Rate Tables, read across to five months and on the line below opposite 15 days (½ month) read +9.0. This adjustment should be added to the number of regular amortization payments to determine the number of payments in utilizing the Annual Percentage Rate Tables:

240 monthly payments + adjustment 9.0 = 249

Following the directions on page one of Volume I: Estimated finance charge $15,039.60 X 100 = $1,503,960 which should be divided by the estimated amount financed for computational purposes:

$1,503,960 ÷ 19,350 = $77.72 estimated finance charge per $100 of estimated amount financed for computational purposes.

Refer to page 309M of Volume I, read down number of payments column to 249; read across to 78.71 (which is nearest to $77.72 computed above), and read up to 6.25% which is the estimated annual percentage rate to be disclosed.

In the example where the interest on the construction phase is computed on the full amount of the commitment without regard for the dates of advances or actual amounts advanced, the estimated finance charge per $100 of amount financed is $81.96. On page 309M of Volume I, read down to the 249th payment line and across to 82.39 which is the nearest amount to $82.96, and read up to 6.50% which is the estimated annual percentage rate to be disclosed.

1/28/70

SECTION 226.814—PREMIUMS FOR INSURANCE ADDED TO AN EXISTING BALANCE

Subsequent to the consummation of a consumer credit transaction the customer may wish to purchase optional insurance in connection with the obligation. Typically, mortgage life and disability insurance may be offered to the customer at some date after consummation under a plan in which the lender will advance the amount of the premium due and add that amount to the existing unpaid balance of the obligation. Generally, each installment on the original obligation paid during the period before the next premium is due will be increased proportionately to liquidate the amount of the additional advance plus any finance charge. Additional advances are made automatically for renewal premiums as they become due unless the borrower requests discontinuance of the coverage. The question arises as to the required disclosures.

In such cases the insurance agreement may be considered a single separate transaction, and the disclosures required under § 226.8, at the creditor's option, need be made only prior to the time the agreement is executed and only with respect to the amount of the initial advance. For example, a mortgage life and disability insurance plan in which the annual premium advanced was $145 repayable in 12 monthly installments of $12.61 added to the regular monthly mortgage payments would be disclosed as an "amount financed" of $145, a "finance charge" of $6.32, and a "total of payments" of $151.32. Additional disclosures as applicable under § 226.8 would, of course, be made. If, as in some cases, only a portion of the advance is liquidated during the premium period with the remainder payable at the end of the mortgage contract, the creditor would likewise calculate the amount of finance charge which would accrue on the advance until paid in full.

In some cases the advance is secured by a security interest in real property which is used or expected to be used as the principal residence of the customer. In those cases the premium advance agreement is rescindable under § 226.9, and notice of the right of rescission provided in § 226.9(b) need only be given at the time the agreement is executed. Subsequent advances for renewal premiums are not subject to the right of rescission.

1/28/70

SECTION 226.815—DISCLOSURE FOR DEMAND LOANS

Section 226.8(b)(3) requires a creditor to disclose the number, amount and due dates or periods of payments scheduled to repay an extension of credit other than open end and, in appropriate cases, the total of payments. The question arises as to how these requirements should be met in the case of demand loans.

Section 226.4(g) provides that for the purpose of calculating the finance charge and annual percentage rate, demand loans are considered to have a one-half year maturity unless the obligation is alternatively payable upon a stated maturity, in which case the stated maturity shall be used.

In order to comply with the requirements of § 226.8(b)(3), if no alternative maturity date is specified, the creditor need disclose only the due dates or periods of payments of all scheduled interest payments for the first one-half year. In such cases, the creditor need not disclose the number, amounts or total of payments or identify any balloon payment. Effective May 1, 1970, creditors shall disclose the fact that the obligation is payable on demand.

If an alternative maturity date is specified, all disclosures required under § 226.8(b)(3) shall be made, using that date.

1/28/70

SECTION 226.816—MORTGAGES WITH DEMAND FEATURES

In some cases real estate mortgages are written for a stated period, for example one year, with the provision that they shall be payable on demand after expiration of that period, provided that until such demand is made the principal and interest shall be paid in scheduled periodic installments until paid in full. The obligation is thus payable according to a specified amortization schedule subject to the holder's right to demand payment after the stated period.

The question arises whether the creditor may make disclosures based on the specified amortization schedule or whether disclosures must be made on the basis of the maturity established by the expiration of the stated period.

In such cases the creditor may make disclosures based on the specified amortization schedule, provided he discloses clearly and conspicuously that the obligation is payable on demand after the stated period together with the fact that disclosures are made on the basis of the specified amortization schedule. Otherwise, disclosures shall be based upon the earliest date demand for payment in full may be made under the terms of the mortgage showing the unpaid balance due at that time as a "balloon payment."

The disclosure requirements of this interpretation shall become effective May 1, 1970.

1/28/70

SECTION 226.817—REDUCTION IN ANNUAL PERCENTAGE RATE

Section 226.8(j) specifies that if any existing extension of credit is refinanced, such transaction shall be considered a new transaction subject to the disclosure requirements of Regulation Z. The question arises as to whether a reduction in the annual percentage rate applicable to an existing extension of credit, when no other credit terms are changed, constitutes a refinancing under § 226.8(j).

When no other credit terms are changed, a reduction in the annual percentage rate applicable to an existing extension of credit does not constitute a refinancing under § 226.8(j), and no disclosures are required.

3/31/70

SECTION 226.818—REFUND OF UNEARNED FINANCE CHARGE; PREPAYMENT PENALTY

Under § 226.8(b)(7) a creditor must provide an identification of the method of computing any unearned portion of the finance charge in the event of prepayment of an obligation, as well as a statement of the amount or method of computation of any charge that may be deducted from the amount of any rebate. Section 226.8(b)(6) requires the creditor to provide "a description of any penalty charge that may be imposed by the creditor or his assignee for prepayment of the principal of the obligation. ..." A question arises whether the computation of certain rebates of unearned finance charges on contracts with precomputed finance charges involves a "prepayment penalty." A second question concerns the disclosures required to identify the method of computing any finance charge rebate.

Section 266.8 (b)(6) relates only to charges assessed in connection with obligations which do *not* involve precomputed finance charges included in the obligation. It applies to transactions in which the finance charge is computed from time to time by application of a rate to the unpaid principal balance. Prepayment penalties which require disclosure under this section (which principally arise in connection with prepayment of real estate mortgages) occur when the obligor in such a transaction is required to pay separately an additional amount for paying all or part of the obligation before maturity. On the other hand, § 226.8(b)(7) is designed to encompass the disclosures necessary with regard to the prepayment of an obligation involving precomputed finance charges which are included in the face amount of the obligation. Therefore, although in a precomputed obligation the finance charge rebate to a customer may be less when calculated according to the "Rule of 78's," "sum of the digits," or other method than if calculated by the actuarial method, such difference does not constitute a penalty charge for prepayment that must be described pursuant to § 226.8(b)(6).

Section 226.8(b)(7) requires "identification" of the rebate method used on precomputed contracts. Many State statutes provide for rebates of unearned finance charges under methods known as the "Rule of 78's" or "sum of the digits" or other methods. In view of the fact that such statutory provisions involve complex mathematical descriptions which generally cannot be condensed into simple accurate statements, and which if repeated at length on disclosure forms could detract from other important disclosures, the requirement of rebate "identification" is satisfied simply by reference by name to the "Rule of 78's" or other method, as applicable.

4/30/73

SECTION 226.819—PREPAID FINANCE CHARGES; ADD-ONS AND DISCOUNTS

Sections 226.8(c)(6), 226.8(d)(2) and 226.8(e)(1) require that certain finance charges be disclosed as "prepaid finance charges." They also require that such prepaid finance charges be excluded or deducted from the credit extended in arriving at the "amount financed." The question arises whether add-on, discount or other precomputed finance charges which are reflected in the face amount of the debt instrument as part of the customer's obligation, but which are excluded from the "amount financed," must be labeled as "prepaid" finance charges.

The concept of prepaid finance charges was adopted to insure that the "amount financed" reflected only that credit of which the customer had the actual use. Precomputed finance charges which are included in the face amount of the obligation are not the type contemplated by the "prepaid" finance charge disclosure concept. Although such precomputed finance charges are not to be included in the "amount financed," they need not be regarded as finance charges "paid separately" or "withheld by the creditor from the proceeds of the credit extended" within the meaning of § 226.8(e) to require labeling "prepaid" under § 226.8(c)(6) and 226.8(d)(2). They are "finance charges," of course, to be disclosed under § 226.8(c)(8) and 226.8(d)(3).

8/23/73

SECTION 226.820 is incorporated into sections 226.8(c)(8)(i) and 226.8(d)(3) effective August 6, 1976, and is rescinded effective that date.

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(gg), 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. Except as provided in § 226.811, 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 unapid 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 obligations, § 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.

1/28/70 *(Supersedes interpretation § 226.903 issued 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 installment 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

Title VI—Provisions Relating to Credit Reporting Agencies

Amendment of Consumer Credit Protection Act

TITLE VI—CONSUMER CREDIT REPORTING

Sec.

§ 601. Short title

This title may be cited as the Fair Credit Reporting Act.

§ 602. Findings and purpose

(a) The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title.

§ 603. Definitions and rules of construction

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

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 604. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 615.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term "file," when used in connection with information on any consumer, means all of the information on that

consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

§ 604. Permissible purposes of reports

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1)In response to the order of a court having jurisdiction to issue such an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

§ 605. Obsolete information

(a) Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years.

(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.

(6) Any other adverse item of information which antedates the report by more than seven years.

(b) The provisions of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $50,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $50,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $20,000 or more.

§ 606. Disclosure of investigative consumer reports

(a) A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or

(2) the report is to be used for employment purposes for which the consumer has not specifically applied.

(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1), shall make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is later.

(c) No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b).

§ 607. Compliance procedures

(a) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 605 and to limit the furnishing of consumer reports to the purposes listed under section 604. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such

user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 604.

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

§ 608. Disclosures to governmental agencies

Notwithstanding the provisions of section 604, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

§ 609. Disclosure to consumers

(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: Provided, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3) The recipients of any consumer report on the consumer which it has furnished—

(A) for employment purposes within the two-year period preceding the request, and

(B) for any other purpose within the six-month period preceding the request.

(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

§ 610. Conditions of disclosure to consumers

(a) A consumer reporting agency shall make the disclosures required under section 609 during normal business hours and on reasonable notice.

(b) The disclosures required under section 609 shall be made to the consumer—

(1) in person if he appears in person and furnishes proper identification; or

(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(c) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 609.

(d) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Except as provided in sections 616 and 617, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 609, 610, or 615, except as to false information furnished with malice or willful intent to injure such consumer.

§ 611. Procedure in case of disputed accuracy

(a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which con-

tained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

§ 612. Charges for certain disclosures

A consumer reporting agency shall make all disclosures pursuant to section 609 and furnish all consumer reports pursuant to section 611(d) without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 615 or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 609 or 611(d). Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursant to section 609, the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

§ 613. Public record information for employment purposes

A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

§ 614. Restrictions on investigative consumer reports

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

§ 615. Requirements on users of consumer reports

(a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(c) No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsection (a) and (b).

§ 616. Civil liability for willful noncompliance

Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 617. Civil liability for negligent noncompliance

Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 618. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

§ 619. Obtaining information under false pretenses

Any person who knowingly and willfully obtained information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than $5,000 or imprisoned not more than one year, or both.

§ 620. Unauthorized disclosures by officers or employees

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined not more than $5,000 or imprisoned not more than one year, or both.

§ 621. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. 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 or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement by the Federal Trade Commission under section 5(b) thereof with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports,the production of documents, and the appearance of witnesses as though the applicable terms and condition of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

(b) Compliance with the requirements imposed under this title with respect to consumer reporting agencies and persons who use consumer reports from such agencies 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 Reserve System (other than national banks), by the Federal Reserve Board; and

(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 these provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration 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; and

(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.

(c) For the purpose of the exercise by any agency referred to in subjsection (b) 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 (b), 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.

§ 622. Relation to State laws

This title does not annul, alter, affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provisions of this title, and then only to the extent of the inconsistency.

Federal Trade Commission
Statements of General Policy or Interpretations*
under the

Fair Credit Reporting Act

Sec. 660.1 Credit guides. (a) Credit guides are generally published by credit bureaus and leased on an annual basis to credit grantors. These "guides" are alphabetical listings of certain information, usually in code, rating each customer as to how he pays his bills. For example, a business dealing with a consumer rates the individual on a scale from zero to nine depending on the type of account, nine being the most favorable rating a person may receive. This information is assembled into a book called a "credit guide" which is distributed, for a fee, to all bureau members wishing to make use of the information.

(b) Section 603(d) of the FCRA defines a "consumer report" as "*any* written, oral, or other communication of any information by a consumer reporting agency bearing on a customer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, *** which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 604." (Italics supplied) Section 604 of the Act prohibits the furnishing of consumer reports except for the specified permissible purposes indicated therein.

(c) "Credit guides," as presently compiled and distributed by credit bureaus, are a series of consumer reports, since they contain information which is used for the purpose of serving as a factor in establishing the consumer's eligibility for credit. It is apparent that at the time these series of consumer reports are distributed, no permissible purpose for obtaining these reports exist, in accordance with the provisions of section 604. That is, though a recipient of the credit guide may have a permissible purpose for obtaining credit information on one or more of the consumers whose names are contained in the "guide," no recipient of the credit guide may have a permissible purpose for obtaining credit information on one or more of the consumers whose names are contained in the "guide," no recipient could conceivably ever have a transaction with every individual whose name is contained therein. Additionally, the permissible purpose for furnishing the consumer report must exist at the time the request for the report is made; it is not enough to obtain the consumer report in anticipation that a permissible purpose will arise subsequently.

(d) For the above reasons, it is the Commission's view that the publication and distribution of these credit guides is violative of the Fair Credit Reporting Act. To allow the continued compilation and distribution of these guides would provide a major means of circumventing the provisions of section 604 of the Fair Credit Reporting Act and would ignore one of the stated purposes of the Act, i.e., "respect for the consumer's right to privacy." Businesses that have need of information on a consumer, and have a right to that information because, for example, the consumer is applying for credit, are expected to contact the consumer reporting agency as the need arises.

(e) Although this interpretation clearly proscribes credit guides in their present form, it does not preclude the furnishing of information by a consumer reporting agency which is coded so that the consumer's identity is not disclosed, and therefore the information does not constitute a "consumer report" until decoded. Information which is coded to insure consumer anonymity and which incorporates procedures to insure the efficient correction of inaccurate, misleading or obsolete information would fall within the scope of this interpretation. For example, unique identifiers such as social security number, drivers license number, or bank account number will provide adequate coding.[1]

[Sec. 600.1, effective February 23, 1973, enforcement beginning August 23, 1973; 38 F.R. 4945.]

Sec. 600.2. Protective bulletins (a) A number of trade associations and other organizations issue Protective Bulletins, which are lists of consumers who have issued worthless checks or who for some other reason may not be credit worthy, or lists of persons whose alleged personal characteristics or affiliations disqualify them for employment. The question arises whether under the FCRA are such lists considered "consumer reports" and if so, may they be distributed?

(b) Communications issued by "persons" (broadly defined in FCRA section 603(b)) which are used to determine a consumer's credit worthiness are limited by sections 603 and 604 of the Fair Credit Reporting Act and such information can only be distributed to credit grantors and others who have a specific legitimate business need for information about that individual in connection with his application for credit, insur-

*The Act does not give the Federal Trade Commission the authority to issue Policy Statements or Interpretations. They are issued pursuant to the Commission's Rules and are advisory in nature, without the force and effect of law. Section 1.73(a) of those Rules is as follows:

Sec. 1.73. Interpretations. (a) *Nature and purpose.* (1) The Commission issues and causes to be published in the FEDERAL REGISTER interpretations of the provisions of the Fair Credit Reporting Act on its own initiative or pursuant to the application of any person when it appears to the Commission that guidance as to the legal requirements of the Act would be in the public interest and would serve to bring about more widespread and equitable observance of the Act.

(2) The interpretations are not substantive rules and do not have the force or effect of statutory provisions. They are guidelines intended as clarification of the Fair Credit Reporting Act, and, like industry guides, are advisory in nature. They represent the Commission's view as to what a particular provision of the Fair Credit Reporting Act means for the guidance of the public in conducting its affairs in conformity with that Act, and they provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of the industry. Failure to comply with such interpretations may result in corrective action by the Commission under applicable statutory provisions.

[1]Note: The Commission will suspend enforcement of this interpretation until August 23, 1973 in order to provide publishers of credit guides the opportunity to recall existing guides to incorporate modifications insuring consumer anonymity and efficient correction of inaccurate, misleading or obsolete information. All credit guides that are in non-compliance must be recalled by August 23, 1973.

ance, employment or other similar business transactions. Therefore, the distribution of certain kinds of lists and "bulletins" appears to be restricted. However, this will not apply to certain kinds of communications issued by organizations which are limited to a series of descriptions, usually accompanied by photographs, of individuals who are being sought by law enforcement authorities for alleged violation of criminal laws. These descriptions are usually accompanied by a statement such as: "Information as to further activities, location or arrest of any of the following persons should be communicated to Police authorities named in the warnings."

(c) In the Commission's view, such bulletins are not a "consumer report" or a series of them because the information was neither collected for consumer reporting purposes nor can it reasonably be anticipated that it will be used in connection with a legitimate business transaction with the persons reported upon. The primary purpose of the bulletins is to warn potential victims of the habits, practices and descriptions of alleged check forgers, swindlers and other criminals for whom arrest warrants are outstanding. While, of course, it is *possible* that an individual warned against in these bulletins could request a consumer loan, insurance, or employment, this is clearly a sufficiently remote possibility so as not to justify elimination of such a publication on FCRA grounds. There appears to be no basis for concluding that the protections, rights, and privileges afforded to consumers under the Fair Credit Reporting Act can be extended to proscribe this kind of warning communication, so long as it remains devoid of information collected or reasonably expected to be used for the purpose of serving as a factor in establishing credit, insurance, employment, or other purposes mentioned in section 604 of the Act.

[Sec. 600.2, effective February 23, 1973; 38 F.R. 4946.]

Sec. 600.3. Loan exchanges. (a) As a rule, loan exchanges are owned and operated on a cooperative basis by local consumer finance companies, and their membership usually includes the nationwide companies operating in the particular area serviced by the exchange. All members of the local exchange are required to furnish to the exchange the full identity and loan amount to each of their borrowers. When a prospective borrower applies for a loan, the loan exchange is contacted for a determination of how many and what kinds of loans he has currently outstanding.

(b) Loan exchanges exist to fulfill one primary function: Collecting and reporting information to prospective credit grantors that has a direct "bearing on a consumer's credit worthiness, credit standing, credit capacity," etc. (definition of "consumer report," section 603(d)).

(c) Section 603(f) of the FCRA defines "consumer reporting agency" to include any person which "*** on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." Accordingly, any exchange or pool which collects information which might bear on a decision to grant credit or insurance for personal, family or household use, or employment, and disseminates this information to its members or other third parties is a consumer reporting agency. Prospective lenders that use this information are required to make the section 615(a) disclosure to consumers when they deny credit on the basis of the information obtained after direct inquiry to another lender (even if that lender's identity was supplied by the loan exchange), then the prospective credit grantor will give the section 615(b) disclosure rather than identify the loan exchange pursuant to section 615(a).

[Sec. 600.3, effective February 23, 1973; 38 F.R. 4946.]

Sec. 600.4. Motor vehicle reports. (a) It is quite common for certain businesses such as insurance companies to request reports on a prospective (or current) insured from various State Departments of Motor Vehicles. These reports are sold to such companies and generally reveal a consumer's entire driving record, including arrests for speeding, drunk driving, involuntary manslaughter., etc.

(b) It is the Commission's view that, under the circumstances in which such a State motor vehicle report contains information which bears on the "personal characteristics" of the consumer; that is, when the report refers to an arrest for drunk driving, such reports sold by a department of motor vehicles are "consumer reports" and the agency is a "consumer reporting agency" when it sells such reports.

(c) Since section 615(b), requiring the user's disclosure of information received from a third person who is *not* a consumer reporting agency, only applies to a denial of *credit,* the consumer is denied this important information when insurance is denied or the cost increased, unless the insurance company identifies the department pursuant to section 615(a), which requires a user to disclose the identity of any consumer reporting agency that has furnished such information.

(d) We believe that there is no basis for granting State motor vehicle departments an exemption from the definition of "consumer reporting agency" (section 603(f)). The reports clearly contain information "bearing on a consumer's *** character, general reputation, personal characteristics, or mode of living," and *when they are used* "as a factor in establishing the consumer's eligibility for *** insurance," (section 603(d)), the FCRA should apply.

(e) It should be noted that this interpretation is not intended to interfere with the legitimate law enforcement activities of state motor vehicle departments. In the Commission's view, the Act imposes the following requirements when state motor vehicle departments furnish motor vehicle reports to insurance companies:

1. That the users (insurance companies) of motor vehicle reports identify (pursuant to Section 615(a)) the motor vehicle department as the source of the report when it is used as a factor in denying, cancelling or increasing the cost of insurance;

2. That motor vehicle departments disclose the "nature and substance" of the consumer's motor vehicle record when requested to do so pursuant to Sections 609 and 610;

3. That motor vehicle departments comply with the reinvestigation requirements of Section 611;

4. That motor vehicle departments comply with the obsolescence requirements of Section 605; and

5. That motor vehicle departments maintain reasonable procedures pursuant to Section 607(b) to assure the maximum possible accuracy of their motor vehicle reports.

(f) This interpretation does not preclude a motor vehicle department from providing information to other state authorities or to federal authorities that are involved in licensing or law enforcement activities.

[Sec. 600.4, effective February 23, 1973; 38 F.R. 4946.]

Sec. 600.5. Prescreening. (a) The practice of prescreening is common in the consumer reporting industry. One typical situation arises when a consumer reporting agency performs a list editing service for customers that market their products by direct mail solicitations. The seller sometimes sends his list to a consumer reporting agency, where the list is edited by deletion of those names that have an adverse credit record in the files.

(b) In this instance, the editing process is only used for the purpose of determining to whom the initial mailing is sent. Those individuals edited out from the original list may apply for credit at a later date, in which case a new credit determination is made without reference to the mailing list either edited or unedited. In other situations, the consumer reporting agency is asked to create its own list of credit worthy individuals, based upon the soliciting business' criteria.

(c) The contention is put forth that the company does not deny credit to anyone whose name was deleted from the initial list and therefore it is not required to give notice to the consumer pursuant to section 615(a). It is also asserted that the prescreening service constitutes a permissible purpose to receive consumer reports under section 604(3)(A). That is, each individual whose name remains on the list then receives a solicitation involving an offer of extension of credit from the company. Finally, the list is used solely for the purpose stated above and is not used at any future date as a basis for denying credit.

(d) The user of a consumer report must be considering a business transaction involving each consumer upon whom a consumer report is furnished. Unlike credit guides, users of prescreened lists have a present intention to have a business transaction with every person on the prescreened list. Moreover, the furnishing of prescreened lists of consumers will only be permissible when the user can certify that every person listed will be the subject of an offer to enter into the particular business relationship involved.

(e) The Commission recognizes that the legislative history of the FCRA reveals a concern for the consumer's privacy and the accuracy of information stored at credit bureaus, and demonstrates a sensitivity as to the balance between the free flow of credit information for legitimate business purposes and the right of the consumer to keep his affairs private. However, the practice of prescreening results in no significant harm to consumers and the practice is not inconsistent with the basic purposes of the Act. Further, the ability of the consumer reporting agency to perform these prescreening services for a credit grantor shall not be deemed to permit delegation to a consumer reporting agency by a business of its credit granting, employment, insurance, or other business decisions whereby the consumr applying for such would be denied the right to the Section 615 disclosures or any other rights under the Act.

[Sec. 600.5, effective February 23, 1973; 38 F.R. 4947.]

Sec. 600.6 Civil Service Commission. (a) In the course of its operations the U.S. Civil Service Commission collects and files data concerning current and potential employees of the Federal Government. This data may include commentary on such matters as the subject's character, general reputation, personal characteristics, or mode of living, and the information is routinely transmitted to various branches of the Government. The question has arisen whether these activities are subject to the provisions of the Fair Credit Reporting Act.

(b) The definition of a "consumer report" in section 603(d)(2) includes any written, oral, or other communication containing information of the type reported by the Civil Service Commission when that communication is used for employment purposes. That provision is applicable, however, only to those reports issued by a "consumer reporting agency," which is described in section 603(f) as being a "person" which assembles such information "for monetary fees, dues, or on a cooperative nonprofit basis" to third parties. Although such a person may be a "government or governmental subdivision or agency" (section 603(b)), it is the Commission's view that the Civil Service Commission was not intended by Congress to be subject to the Fair Credit Reporting Act.

(c) While in another context exchanges of information between the Civil Service Commission and other Government agencies might be described as "nonprofit" and "cooperative," and legislative history of section 603(d) indicates that that language was intended to refer to commercial enterprises engaged in mutually beneficial exchanges of information. (See 116 Cong. Rec. 36576 (remarks of Representative Brown) (1970).) The proposition that Federal agencies were meant to be included as well finds no support in the congressional debates or committee reports.

(d) In addition, there is no reference to administrative agencies of the U.S. Government in the discussions of the definition of the term "consumer reporting agency" which preceded passage of the Fair Credit Reporting Act, 116 Cong. Rec. 35941 (remarks of Senator Proxmire) (1970); 116 Cong. Rec. 36576 (remarks of Representatives Wylie, Sullivan, Brown, and Widnall (1970)). Normally Congress requests the views of officials of affected agencies when hearings are held on proposed legislation. It is unlikely that legislation affecting the Civil Service Commission would have been considered and passed without the benefit of comments from that agency.

(e) For these reasons, the reporting activities of Federal agencies such as the Civil Service Commission will not be included within the scope of the Commission's Fair Credit Reporting Act enforcement program.

[Sec. 600.6, effective December 8, 1973; 37 F.R. 21319; republished February 23, 1973; 38 F.R. 4947.]

Forms Prepared by the Staff of the Federal Trade Commission which Comply with the FAIR CREDIT REPORTING ACT

I. Sample Combined Section 615(a) and Section 615(b) Disclosure Form

Mr. John Q. Consumer
345 Main Street
Anytown, U.S.A.

Dear Mr. Consumer:

Thank you for your recent application for credit privileges. We regret that we have declined your application at this time, based upon the following factors (appropriate box[es] is[are] checked):

1. ☐ Information contained in a consumer credit report obtained from:
2. ☐ A consumer credit report containing insufficient information for our needs. It was obtained from:
3. ☐ The consumer reporting agency contacted was unable to supply any information on you. That agency was:
4. *☐ After contacting (type of third party) we were informed that (nature of information received from third party)

   **☐ Information received from a person other than a consumer reporting agency. You have the right to make a written request of us within 60 days for disclosure of the nature of this information.
5. ☐ Our decision was based upon our own internal standards for granting credit (reasons may be given).

If either of the first two boxes above is checked, you have the right to full disclosure of the nature and substance of all information on you (except medical) in the agency's files, at no charge to you.

Yours very truly,

USER

* Recommended Section 615(b) disclosure
** Alternative Section 615(b) disclosure

II. Sample (Nature of Information) Disclosure Required of Users under Section 615(b) of the FCRA.

Mr. Harry Doe
615 Avenue "B"
Anytown, USA

Dear Mr. Doe:

In response to your request for a statement of our reasons for turning down your recent application for credit, our records reveal that your application was not approved because:

Your employer informed us that you were a part-time rather than full-time employee.

or

A department store in this city told us that you were several months behind in your payments.

or

The local branch office of a finance company informed us that it had turned your account with them over to a collection agency.

or

A bank in this city told us that your checking account was consistently overdrawn.

We appreciate your patronage, and invite you to shop with us on a cash basis.

Very truly yours,

Richard Roe,
Credit Manager

III. Acceptable Disclosure of the Investigative Consumer Reports Under Sec. 606(a)(1) of the FCRA.

when a separate notice is used

[This is to inform you that as part of our procedure for processing your (initial insurance) (renewal insurance) (credit) (employment) application]

or

when disclosed in the application**

[In making this application (for insurance) (for credit) for employment) it is understood that]

an investigative consumer report may be prepared whereby information is obtained through personal interviews with your neighbors, friends, or others with whom you are acquainted. This inquiry includes information as to your character, general reputation, personal characteristics and mode of living. You have the right to make a written request within a reasonable period of time to receive additional, detailed information about the nature and scope of this investigation.

** Disclosure incorporated in an insurance or employment application, or other document must be clear, conspicuous, separately stated, and placed so as likely to be read.

IV. Request For In Person Disclosures

NAME OF CREDIT BUREAU

I request disclosure of the nature and substance of all information (except medical) on me in the credit bureau's files, including the sources of the information (except investigative sources) and identification of the recipients of all reports furnished within the last six months (or the last two years if furnished for employment purposes).

REASON FOR INTERVIEW

☐ Credit, Insurance or Employment denied within the past 30 days by

_____

(There is no charge for the interview.)

☐ Credit, Insurance or Employment denied over 30 days ago. (If there is a charge for the interview, it will be $ _____.)

☐ Other. (If there is a charge for the interview, it will be $ _____.)

NAME_____SPOUSE'S NAME_____

PRESENT ADDRESS_____

_____ZIP CODE _____HOW LONG THERE? _____

EMPLOYED BY _____

DATE OF BIRTH _____SOCIAL SECURITY NO. _____

Documentary Identification Presented _____
(Driver's License, etc.)

I understand the credit bureau will inform me in advance of any charges resulting from this interview for which I am properly responsible to pay.

I am the person named above and I understand that the Federal law provides that a person who obtains information from a consumer reporting agency under false pretenses shall be fined not more than $5,000 or imprisoned not more than one year or both.

I hereby authorize the bureau named above to review my credit record with me in the presence of _____ _____who has furnished reasonable identification to the credit bureau.

Signed _____Date _____

Additional information relating to identity, credit references, etc. may be supplied on the reverse side.

V. Appendix 603(d)(3)(C) contract

ABC Finance Company

Dealer Name & Address

Gentlemen:

Pursuant to provisions of the Fair Credit Reporting Act (Public Law #91-508—Title VI of the Consumer Credit Protection Act) and in connection with retail installment sales transactions submitted to us for purchase, the law and this agreement requires you to notify each prospective purchaser of our name and local branch address when such purchase is intended for personal, family or household use.

This letter constitutes your representation and warranty to us that you will fully comply with the foregoing requirement.

Kindly confirm and acknowledge this understanding by signing the duplicate copy of this agreement which should be returned to us in the enclosed business reply envelope for which no postage is required.

Thank you for your cooperation.

By _____
Manager

Agreed:

_____

By_____

Title _____

Selected questions and answers from the pamphlet, "Financial Institutions and the Fair Credit Reporting Act," Published jointly by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board (May 1971)

1. May a financial institution obtain a consumer report from a consumer reporting agency in connection with a consumer's application for an extension of credit?

YES. Reports may be obtained for this purpose, as well as certain other legitimate business purposes. Reports (known as "consumer reports" under the statute) may also be obtained in connection with the review or collection of an account, in connection with employment, or the underwriting of insurance. § 604 (See question 25 for a list of permissible purposes.)

2. Are new procedures required to obtain a consumer report?

YES. The financial institution must identify itself and certify to the reporting agency (called a "consumer reporting agency" under the statute) the purposes for which the information is sought. It must also certify that the information will be used for no other purpose. § 607.

3. Must certification be given each time a consumer report is requested?

NO. A written blanket certification by the financial institution could cover all inquiries to a particular consumer reporting agency.

4. Does a financial institution which uses a consumer report have any new responsibilities to the consumer?

YES. If a financial institution denies employment or if it denies credit or insurance for personal, family, or household purposes, or if it increases the cost, even partially because of information in a consumer report *from a consumer reporting agency*, it must make disclosures to the consumer. It must advice him orally or in writing that information in the report caused or contributed to the denial or increase in cost, and inform him of the name and address of the consumer reporting agency issuing the report. The financial institution is not required to disclose the nature of the information in the report. § 615(a) (See question 56 which deals with the denial of employment based on a consumer report.)

5. What would constitute a "denial" of credit?

If any condition is imposed, without which credit would not be extended, *and* it is imposed because of information in the consumer report, there is a "denial" which would require disclosures. This would include cases where a larger downpayment, a shorter maturity, a co-signer, guarantor, or additional collateral is required as a condition of extending credit. If a consumer applies, for example, for a credit card limit of $1,500, and only $1,000 is approved because of information in a consumer report, a "denial" has occurred.

6. Does a financial institution have any responsibility to the consumer when it obtains information from *someone other than a consumer reporting agency*?

YES. Disclosures must be made when *credit* for personal, family, or household purposes is denied or the charge is increased even partially because of information obtained from someone other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Disclosure would not be required if the denial is based on the financial institution's own experience with the consumer, on his credit application, or on the institution's own credit policies. Where disclosures are required they must be made regardless of whether the information is obtained currently, or is already in the files. At the time credit is denied or the charge increased, the financial institution must inform the consumer orally or in writing of his right to make a written request for disclosure of the "nature" of the information. If the consumer requests this information within 60 days, the financial institution must tell him the nature of the information orally or in writing. Note that these requirements apply only in the case of credit, and not in the case of insurance or employment where disclosures are required *when a report from a consumer reporting agency* is involved. § 615(b) (See question 4.)

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8. In disclosing the "nature" of the information, must the source be disclosed?

Although the statute does not require that the source be disclosed, it may be impossible to identify the "nature" of certain information without also revealing the source.

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13. Must a financial institution make any disclosures to the consumer when it denies credit or increases the charges solely on the basis of its prior transactions or experiences with the consumer, or on the basis of unverified information furnished by the consumer on his application?

NO. There is no responsibility of disclosure in these circumstances. However, if credit is denied or the cost increased because of information obtained from third parties in the process of verifying information on the application, then disclosures must be made. § 603(d)(3)(A).

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15. What are some actions that a financial institution should consider taking to insure that it can comply with the requirements imposed on a user of consumer reports?

First, file the appropriate certification mentioned in question two with each consumer reporting agency whose services are expected to be used. Retain a file copy. Instruct employees that consumer reports may be obtained only for the purposes specified in the Act and certification. Develop procedures for making required disclosures to consumers when credit, insurance, or employment is denied, or when the cost of credit or insurance is increased, based on information obtained from outside sources. Record all inquiries to reporting agencies or others, as

well as the information obtained through those inquiries, so that accurate disclosure can be made to consumers.

Forms may be useful to advise the consumer of the name and address of the consumer reporting agency (when a consumer report is involved), or to advice him of his rights to request the nature of the information when other outside sources are involved.

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18. What information may a financial institution give to third parties in response to inquiries about a consumer, without becoming a consumer reporting agency?

The financial institution may relate information solely as to its transactions or experiences with the consumer. For example, the financial institution may disclose that the consumer had a history of delinquency, or was current, and could give other information as to the status of any loans or deposits with it. To assure that it does not become a consumer reporting agency, it should not regularly give out information contained in credit applications bearing on the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. In addition it should not regularly give out information obtained in reports from consumer reporting agencies, or any other information obtained from third parties. For example, a financial institution which obtained information as a "user" may become a consumer reporting agency if it subsequently conveys the information to another financial institution.

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25. What are the authorized purposes for which consumer reports can be furnished?

Reports may be furnished only in the following circumstances:

—In response to a court order;

—In accordance with the written instructions of the consumer to whom it relates;

—In connection with an extension of credit involving the consumer (or review or collection of his account);

—For employment purposes;

—In connection with the underwriting of insurance;

—In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality in which the determination of an applicant's financial responsibility or status is required by law, or

—For any other legitimate business need in connection with a business transaction involving the consumer (for example, on a consumer who wishes to establish a checking account in the financial institution, or a builder checking the financial condition of a prospective buyer). § 604

26. Are there any other situations in which a consumer reporting agency may furnish information?

YES. It may also furnish identifying information to a governmental agency for other purposes, limited to the consumer's name, address, employment, and former addresses and places of employment. § 608

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42. Does a financial institution which regularly purchases dealer paper have specific responsibilities with regard to those transactions?

YES. If the financial institution wishes to avoid becoming a consumer reporting agency. When a dealer calls the financial institution *before credit is extended* to inquire whether the institution will either extend credit directly to his customer or purchase the retail contract, and the financial institution denies the credit or increases the cost, even partially because of information from outside sources, the dealer and the financial institution must *each* make certain disclosures to the consumer to keep the financial institution from being considered a consumer reporting agency.

Whenever such a request is made, the dealer must advise the consumer of the name and address of the financial institution. If the financial institution denies credit or increases its cost, it must follow the normal procedures of a user of information from outside sources. If the financial institution's decision was based on a report from a consumer reporting agency, it must give the consumer the name and address of the agency. If its decision was based on information from a third party, which is not a consumer reporting agency, the financial institution must disclose to the consumer his right to make a written request to the financial institution within 60 days for disclosure of the nature of the information.

If the decision to deny credit or increase its cost is based on the financial institution's prior experience with the consumer or its general credit policy (for example, size of downpayment or maturity required) it would not need to make any disclosure to the consumer. However, a denial requiring disclosures occurs when any condition is imposed on the dealer contract on the basis of information *from any outside source.* This may include increasing the discount or dealer reserve or taking the paper with recourse. It may also include requiring a larger downpayment, shorter maturity, a co-signer or guarantor. § 603(d)(3)(C), § 615

43. If, subsequent to an extension of credit to a consumer, a financial institution sells the consumer's obligation to a third party (including a collection agency), and furnishes information on the consumer which was obtained from outside sources to the third party in connection with that sale, does the financial institution become a consumer reporting agency?

NO. Such a transaction is a business transaction which is generally beyond the scope of the Act.

44. What is an "investigative consumer report?"

This would be a consumer report compiled from personal interviews with neighbors, friends, associates or others as to the consumer's character, general reputation, personal characteristics, or mode of living. § 603(e)

45. What are the responsibilities of a financial institution as a user of an investigative consumer report?

When such a report is requested from a consumer reporting agency, the financial institution must mail or deliver written notice to the consumer within three days that an investigative

report including information as to his character, general reputation, personal characteristics, and mode of living may be made. He must also be informed that he may make a written request for the "nature and scope" of the investigation. If the consumer makes a written request within a reasonable period of time, the financial institution must make a complete and accurate disclosure of the "nature and scope" of the investigation. One way to do this (although not required by the law) would be to furnish the consumer a copy of any questionnaires to be used in the investigation. Within five days after the consumer's request (or five days after the time the report was first requested by the financial institution, whichever is later) these disclosures must be made in writing by mailing them or otherwise delivering them to the consumer. § 603(e), § 606, § 609(a)(2)

46. Are disclosures required in all instances when investigative consumer reports are used?

NO. They are not applicable when the report is to be used for employment purposes and the consumer has not specifically applied for the position. § 606(a)(2) In addition, they are not required if the financial institution conducts an investigation for its own purposes, using its own employees.

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54. In evaluating a potential employee, may a financial institution obtain a consumer report from a consumer reporting agency or other information from present or former employers?

YES. However, financial institutions insured by the Federal Deposit Insurance Corporation should not rely entirely upon a consumer report to obtain information as to whether an individual has been convicted of a crime involving dishonesty or breach of trust to meet Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829). Information relating to such crimes is relevant to meeting the requirements of Section 19 regardless of when the conviction occurred, whereas such information, if older than seven years, will probably not be contained in a report from a consumer reporting agency, unless the report is to be used in connection with employment at an annual salary of $20,000 or more.

55. Must the consumer be notified if the report takes the form of an investigative consumer report?

Generally, YES, if the financial institution requests the report from a consumer reporting agency. However, notification would not be required if the report is obtained in connection with employment, promotion, or reassignment for which the consumer has not specifically applied. Otherwise, he must be notified of the request for an investigative report within three days of the request, and the financial institution must otherwise comply with § 606.

56. Does the financial institution have any responsibilities to the prospective employee if employment is denied on the basis of a consumer report?

YES. If employment is denied, even partially on the basis of information in a consumer report from a consumer reporting agency, the individual must be given the name and address of the consumer reporting agency making the report. However, if employment is denied because of information from a source *other than a consumer reporting agency,* no disclosures are necessary. § 615

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Introducing Crediscope®

A new format for Credit History

By John L. Spafford, President
Associated Credit Bureaus, Inc.
Houston, Texas

A four-year project jointly undertaken by Associated Credit Bureaus, Inc. and an Advisory Group representing major national credit granters has been concluded with the adoption of a program called "Crediscope." The name "Crediscope" applies to a new standard format which credit granters will use in reporting consumer credit information to credit bureaus, and which credit bureaus in turn will incorporate on ACB Form 2000, the revised standard reporting blank.

Members of the Credit Granter Advisory Group, all of whom have made significant contributions through correspondence and meeting attendance in arriving at the new reporting terminology, included representatives of sales finance companies, loan companies, banks, major retailers, oil companies, bank cards, and travel and entertainment card issuers.

The changes represented by the new Form 2000 and the Crediscope language center mainly around the ledger experience or trade line, which is incorporated in the Credit History section of the credit bureau report. In addition to showing the present status of the account (current balance, plus amount and number of payments past due), a profile of the "historical status" of the account will be included as the major change. The creditor in furnishing his ledger experience will be asked to review 12 months payment history (for an open or revolving account), and in the case of an installment loan or other installment account may review and include the history for the length of time the contract has been in force.

Under Historical Status the creditor will indicate how many times (if any) the account was 30 to 59 days past due, 60 to 89 days past due, and 90 days or over past due, during the length of time reviewed.

The new method of reporting credit history was enthusiastically endorsed by the Credit Granter Advisory Group, who regard it as a more precise and objective way of reporting than the numerical rating method which has been used under the term "Common Language" by the industry in recent years.

One major criticism of the numerical rating system, which has been intended to convey the account's "usual manner of payment" has been that many credit granters in furnishing this rating have merely applied the consumer's paying habits to the present standing of the account. Thus, in some cases the current rating such as "I-1" or "I-3" may mean only the current status of the account, as opposed to the way it usually pays.

The ACB Board of Directors has approved an implementation timetable for its member credit bureaus. This timetable calls for use of the new reporting Form 2000 beginning April 1, 1977. It permits the interchangeable use of the form with possible continued use in some instances of the current Form 100, until January 1, 1978, at which time the changeover will be completed. This means that although creditors are urged to begin reporting in the new method as early as possible, requisite time will be available in which to make the transition.

Many major creditors who supply their ledger experience to credit bureaus via computer tape have already been converting to the new standard industry tape format. Copies of this tape format can be supplied directly by the credit bureau entities to which these creditors already make their information available. Those creditors who are supplying tape input to ACB Services, our subsidiary corporation, for sorting and distribution on microfiche to manual bureaus for the "TVS" service will receive the tape format direct from ACB Services.

ACB plans an intensive educational effort to provide training materials for the use of its member bureaus, not only training their own employees in

the use of the Crediscope program, but also to be able to hold meetings with local creditors to gain their cooperation in the way they furnish credit information by mail, messenger or telephone.

It should be emphasized that this entire concept began with the feeling expressed by major finance companies, banks and retailers that in the present consumer era, with the FCRA then having been in effect for almost a year at that time, it was opportune for the consumer credit industry to re-examine practices and procedures to be able to refute any charge of inaccuracy or subjectivity in the fundamental information on which consumer credit decisions are based.

Some major creditors felt that the numerical rating system contained in the Common Language, which had been instituted by ACB in 1965, was not as definitive as it might be, and they were aware of the tendency by some creditors to be over-lenient in calling an account "O-1" or "I-1" if it was not past due at the moment, even though it may have been several times past due in prior months.

The first meetings of the Credit Granter Advisory Group were devoted to intense discussion of the above and other practices of credit granters and credit bureaus. In order to have a firm factual basis before drawing any conclusions, the group requested ACB to do a large fact-finding survey.

The ACB questionnaire was carefully drawn up and, with revisions, was approved by the advisory group and issued in the Spring of 1973. Two separate survey groups were used. The smaller group consisted of 98 major companies of which 59 gave full participation. The second group consisted of local credit granters in 144 cities spread over 36 states, and 1100 replies were received, a response of 39%. Groups surveyed among the local credit granters were automotive, banks, clothing, department and variety, finance, home furnishings, real estate and public accommodation and utility — fuel.

The major thrust of both surveys, which were tabulated separately, was to find out the relative importance to creditors of the various elements contained in a credit report, such as verification of identifying information (employment, home ownership, etc.) and, more importantly, the various data contained in the ledger experience.

The survey revealed some very significant factors such as the fact that 97% of major creditors wished to know the amount owing on a consumer's account when evaluating a credit risk, 91% need the date the account was opened and 83% consider it important to know the highest credit extended. Many other related statistics were tabulated.

After meetings to carefully evaluate all of the survey results, further meetings of the advisory group evolved the new method of clarifying credit history which will positively highlight possible past due conditions of the account within the last 12 months history, or the length of the contract. No longer will the creditor be called upon to categorize an account as slow (I-3), but merely to indicate factually the way it has been paid.

The Crediscope program could have been introduced sooner were it not for the passage of the Fair Credit Billing Act and the Equal Credit Opportunity Act, and the knowledge that regulations for their enforcement would be issued some time in the Fall of 1975 and amended in March of 1977. The industry was apprehensive that these regulations would be complex if not bewildering, and would require extensive changes in record-keeping. (Little did industry know how accurate that forecast was!) Thus, it was necessary to suspend final adoption of the Crediscope project and mark time for months while creditors and credit bureaus waited for and then tried to digest Regulation B, in order that the necessary changes in computer programming might be meshed to accommodate the new regulations and new credit language simultaneously.

One feature of the new method of reporting will include a series of 3-letter abbreviations which can be used when necessary by creditors to explain unusual conditions pertaining to a particular credit experience. These abbreviations will include provision for necessary indication of pending disputes as well as resolved disputes to comply with the Fair Credit Billing Act.

One debatable item in the credit history section concerned the question whether or not there should be a provision under Historical Status to indicate whether an account has ever been 10 to 29 days past due. A few installment bankers advocated this, but at the last meeting of the Credit Granter Advisory Group, at which a number of major banks were represented, the 33 creditors present unanimously stated that their companies would not report information in the 10 to 29 day past due category, and voted not to include it in the format.

ACB members are deeply indebted to the many creditors and credit bureau managers who contributed so much time and effort to the research studies and hours of meetings which have gone into the Crediscope project. Working together for the benefit of the consumer, we can preserve and strengthen the consumer credit economy by continued enthusiastic cooperation in implementing this program.

☐ SINGLE REFERENCE ☐ IN FILE REPORT ☐ TRADE REPORT

☐ FULL REPORT ☐ EMPLOY & TRADE REPORT ☐ PREVIOUS RESIDENCE REPORT

☐ OTHER_____

CONFIDENTIAL *Crediscope®* **REPORT**

FOR

Date Received	
Date Mailed	
In File Since	
Inquired As:	

This information is furnished in response to an inquiry for the purpose of evaluating credit risks. It has been obtained from sources deemed reliable, the accuracy of which this organization does not guarantee. The inquirer has agreed to indemnify the reporting bureau for any damage arising from misuse of this information, and this report is furnished in reliance upon that indemnity. It must be held in strict confidence, and must not be revealed to the subject reported on, except by reporting agency in accordance with the Fair Credit Reporting Act.

REPORT ON: LAST NAME	FIRST NAME	INITIAL	SOCIAL SECURITY NUMBER	SPOUSE'S NAME
ADDRESS: CITY	STATE:	ZIP CODE	SINCE:	SPOUSE'S SOCIAL SECURITY NO.

COMPLETE TO HERE FOR TRADE REPORT AND SKIP TO CREDIT HISTORY

PRESENT EMPLOYER:	POSITION HELD:	SINCE:	DATE EMPLOY VERIFIED	EST. MONTHLY INCOME
				$

COMPLETE TO HERE FOR EMPLOYMENT AND TRADE REPORT AND SKIP TO CREDIT HISTORY

DATE OF BIRTH	NUMBER OF DEPENDENTS INCLUDING SELF:	☐ OWNS OR BUYING HOME	☐ RENTS HOME	☐ OTHER: (EXPLAIN)

FORMER ADDRESS:	CITY:	STATE:	FROM:	TO:

FORMER EMPLOYER:	POSITION HELD:	FROM:	TO:	EST. MONTHLY INCOME
				$

SPOUSE'S EMPLOYER:	POSITION HELD:	SINCE:	DATE EMPLOY VERIFIED	EST. MONTHLY INCOME
				$

CREDIT HISTORY *(Complete this section for all reports)*

WHOSE ACCOUNT	KIND OF BUSINESS AND ID CODE	DATE REPORTED AND METHOD OF REPORTING	DATE OPENED	DATE OF LAST PAYMENT	HIGHEST CREDIT OR LAST CONTRACT	PRESENT STATUS			HISTORICAL STATUS				TYPE & TERMS (MANNER OF PAYMENT)	REMARKS
						BALANCE OWING	PAST DUE AMOUNT	PAST DUE NO. OF PAYMENTS	NO. MONTHS HISTORY REVIEWED	TIMES PAST DUE 30-59 DAYS ONLY	TIMES PAST DUE 60-89 DAYS ONLY	TIMES PAST DUE 90 DAYS AND OVER		

MEMBER

FORM 2000-A

Associated Credit Bureaus, Inc.

TERMS OF SALE

Open Account (30 days or 90 days)	O
Revolving or Option (Open-end a/c)	R
Instalment (fixed number of payments)	I

KIND OF BUSINESS CLASSIFICATION

Code	Kind of Business
A	Automotive
B	Banks
C	Clothing
D	Department and Variety
F	Finance
G	Groceries
H	Home Furnishings
I	Insurance
J	Jewelry and Cameras
K	Contractors
L	Lumber, Building Material, Hardware
M	Medical and Related Health

Code	Kind of Business
N	National Credit Card Companies and Air Lines
O	Oil Companies
P	Personal Services Other Than Medical
Q	Mail Order Houses
R	Real Estate and Public Accommodations
S	Sporting Goods
T	Farm and Garden Supplies
U	Utilities and Fuel
V	Government
W	Wholesale
X	Advertising
Y	Collection Services
Z	Miscellaneous

A. Column 1, "Whose Account", provides a mean's of showing how a credit grantor maintains the account for ECOA purposes. Examples: 0 – Undesignated, 1 – Individual account for individual use, 2 – Joint account contractual liability, 3 – Authorized user spouse, 4 – Joint, 5 – Co-maker, 6 – On behalf of account.

B Column 3, "Method of Reporting", indicates how a trade item was placed in file: A – Computer tape or TVS, M – Manual.

C. When inserting dates, use month and year only (Example: 12-76)

D. Manner of Payment using present common language coding (I-175-1) will be printed in column 15 for in-file trade items which do not contain information for columns 9 through 14.

E. Remarks codes (Examples)

ACC – Account closed by consumer.
AJP – Adjustment pending.
BKL – Account included in Bankruptcy
CCA – Consumer counseling account. Consumer has retained the services of an organization which is directing payment of his accounts.
CLA – Placed for collection.
DIS – Dispute following resolution.
DRP – Dispute resolution pending.
JUD – Judgment obtained for balance shown.
MOV – Moved. Left no forwarding address.
PRL – Profit and loss write-off.
RLD – Repossession. Paid by dealer.
RLP – Repossession. Proceeds applied to debt.
RPO – Repossession
RRE – Repossession, redeemed.
RVD – Returned voluntarily. Paid by dealer.
RVN – Returned voluntarily.
RVP – Returned voluntarily, proceeds applied to debt.
RVR – Returned voluntarily, redeemed.
STL – Plate stolen or lost.
WEP – Wage Earner Plan Account (Chapter XIII of the Bankruptcy Act).

F. Account Numbers, if shown, should appear on second line just below each trade item.

G. Disputes and comments associated with specific trade lines should be printed on second or third line in cases where account numbers are printed.

TRW / CREDIT DATA

SPECIAL COMMENT CODES

Comment Codes	Display on TRW Reports	Resulting Status
S	"Special Handling—Contact Subscriber if Additional Information Required"	The input status will retain the previous history of the account in TRW Credit Data's file.
U	"Special Handling—Contact Subscriber if Additional Information Required"	The input status will override any previous history of the account in TRW Credit Data's file.
V	"Adjustment Pending—Reported by Subscriber"	The input status will override any previous history of the account in TRW Credit Data's file.
W	"Account in Dispute—Reported by Subscriber"	The input status will override the previous history of the account in TRW Credit Data's file.
X	"Account in Dispute—Reported by Subscriber"	The input status will retain the previous history of the account in TRW Credit Data's file.
Y	"Account in Dispute—Reported by Subscriber"	The input status will override any previous history of the account in TRW Credit Data's file.
Z	"Account Previously in Dispute—Reported by Subscriber"	The input status will override any previous history of the account in TRW Credit Data's file.
P	"Subscriber Reports Dispute Resolved—Consumer Disagrees"	The input status will retain the previous history of the account in TRW Credit Data's file.
Q	"Subscriber Reports Dispute Resolved—Consumer Disagrees"	The input status will override any previous history of the account in TRW Credit Data's file.
L	"Credit Line Closed"	The input status will retain the previous history of the account in TRW Credit Data's file.
M	"Credit Line Closed—Grantor's Request"	The input status will retain the previous history of the account in TRW Credit Data's file.
N	"Credit Line Closed—Consumer's Request"	The input status will retain the previous history of the account in TRW Credit Data's file.
R	Removes any previous reported Special Comment Code, as defined above	The input status will override any previous history of the account in TRW Credit Data's file.
b (blank)	Removes any previous reported Special Comment Code, as defined above	The input status will override any previous history of the account in TRW Credit Data's file.

ASSOCIATION CODES

0 (zero) . . . . . Undesignated Account (used on all accounts which have not been reported with one of the other Association Codes).

1 . . . . . Individual; only one individual is reponsible or has use of the account.

2 . . . . . Contractually Responsible; this individual is reponsible for the account. There are one or more other individuals who share responsibility or use of the account.

3 . . . . . Authorized User; the individual has use of an account for which another individual (or individuals) have contractual responsibility.

4 . . . . . Joint Account (used for joint accounts which cannot be clearly designated with codes 2 or 3).

5 . . . . . Co-Maker Account (used for an account involving co-signers in which there is no spouse relationship).

6 . . . . . "On Behalf Of" Account.

7 . . . . . Maker Account (used as the primary maker whenever a co-maker is involved on the account).

T . . . . . Association with account terminated.

DATA RECORD ELEMENT DESCRIPTORS

This section describes each data element in the Subscriber Data Record which is the Base Segment of the Standard Reporting Format. Field numbers with asterisks (*) indicate required data elements. Other fields are optional or not currently used by TRW.

Field No. (Positions)	Field Name and Description	Comments
1* (1-4)	RECORD DESCRIPTOR: The RDW is the field which contains the length of the logical record in binary configuration. This record length includes the 4-byte RDW.	
2* (5-11)	IDENTIFICATION NUMBER: Report your internal code(s) which identifies your branch, office and/or credit central where account information is verified. Multiple identification numbers should be reported as appropriate to your internal account structure. Alphanumeric, right justify and blank fill unused portions.	
3* (12-28)	ACCOUNT NUMBER: This field contains the individual's account number as extracted from your file. Numeric, left justify, and blank fill. Do not include imbedded blanks or special characters.	
4* (29-30)	ACCOUNT TYPE: This field contains the TRW type codes that properly identify your accounts.	
5* (31-32)	ACCOUNT STATUS: This field contains the TRW status codes that properly identify the condition of the account.	
6 (33-38)	USUAL MANNER OF PAYMENT: Not currently used by TRW. If you do not use this field, blank fill.	
7* (39-40) PACKED	TERMS: This field contains the duration of credit extended. A constant of 01 or 10 is typically reported for all open-end or revolving charged accounts. The terms for real estate (account type codes 8, 19, 25, and 26) will be in years. For other account types, terms will be in months.	
8* (41)	TRANSACTION TYPE: Establish transaction type codes in 1, 7, 4 priority. *Type:* 1—New open accounts—not on TRW file in the previous reporting period. 7—Address change since last reporting period. 4—If account is not a type 1 or 7, default to 4. For *Conversion,* report for accounts as Type 1. For *Update,* report types as applicable to priority.	
9* —42-45) PACKED	DATE OPENED: Enter the date the account was originally opened in MMDDYY format. If the day is not available, dupe 01. If the entire date is not available, blank fill.	

DATA RECORD ELEMENT DESCRIPTORS (Continued)

Field No. (Positions)	Field Name and Description	Comments
10* (46-49) PACKED	DATE OF OCCURRENCE: The Fair Credit Reporting Act requires purging of certain accounts on a specified frequency, based on status. Therefore, all accounts must have an appropriate Date of Occurrence which will be used to comply with the Act.	
11 (50-53) PACKED	DATE OF LAST PAYMENT: Not currently used by TRW. If you elect to report date of last payment, use MDDYY format. If the day is not available, dupe 01. Otherwise, blank fill.	
12* (54-57)	AMOUNT: Report high credit, amount of contract, or credit limit. Exception: When reporting charge offs the amount charged to loss will be placed in this field. Report dollars only (omitting cents), right justify, and zero fill.	
13* (58-61) PACKED	CURRENT BALANCE: Report total amount owed. If there are only late charges or special assessment outstanding, do not report these as the current balance. Report all minus conditions as zero balance. Report dollars only (omitting cents), right justify, and zero fill.	Not required for exception reporters
14* (62-65) PACKED	AMOUNT PAST DUE: The total amount in arrears associated with the delinquency status (e.g., 30, 60, 90 days delinquent). The amount past due must never be greater than the current balance. Report dollars only (omitting cents), right justify and zero fill.	Not required for exception reporters.
15 (66-99)	MONTHLY PAYMENT: Not currently used by TRW. If you elect to report monthly payment, report dollars only (omitting cents), right justify, and zero fill. Otherwise, blank fill.	
16* (70-74) PACKED	SOCIAL SECURITY NUMBER of principal borrower: Report valid social security numbers, not Federal tax I.D. numbers, etc. Format is NNNNNNNNN. No alpha characters. If not available, blank fill.	
17 (75)	SPECIAL COMMENTS: Used to identify accounts which require special handling, e.g., disputed account or adjustment pending.	
18 (76)	MARITAL STATUS: Not used by TRW. If not used, blank fill.	
19* (77-81)	ZIP CODE: Report the consumer's 5 digit zip code. If a numeric zip code is not available, enter the applicable 2-character alpha state designator. Left justify and blank fill.	

DATA RECORD ELEMENT DESCRIPTORS (Continued)

Field No. (Positions)	Field Name and Description	Comments
20* (82)	ASSOCIATION CODE: Shows the association to the account of the individual described in this segment. 0 . . . . . Undesignated 1 . . . . . Individual Account 2 . . . . . Contractually Responsible 3 . . . . . Authorized User 4 . . . . . Joint Account 5 . . . . . Co-Maker 6 . . . . . "On Behalf Of" 7 . . . . . Maker Account T . . . . . Terminated	
21 (83-84)	CYCLE IDENTIFIER: This field is only used by subscribers who report account information by cycle. If used, left justify and blank fill. Otherwise, blank fill.	
22*	NAME: Report the name of the principal borrower. Eliminate titles or special characters, where possible. Requires a minimum of one space between names and/or initials. Format—either: Last, first, middle (preferable)or First, middle, last Do not intermix formats. If the format is intermixed on your own file, your TRW data analyst will assist you in developing a method for reporting in one format.	
23 (115)	GENERATION CODE: If an isolated generation code is available on your file, report: J . . . . . Junior S . . . . . Senior 2 . . . . . II 3 . . . . . III 4 . . . . . IV If not isolated on your file, blank fill. (Note: If the generation code is part of the name field, it will be discerned by our system.)	
24* (116-145)	FIRST LINE OF ADDRESS: Report street number, direction, and name, then miscellaneous, such as box number, apartment number, etc. Eliminate c/o and internal messages, such as "Do not mail." Left justify and blank fill unused positions.	
25* (146-175)	CITY/STATE: Second line of address is usually the city and state. States may be reported with the standard Post Office abbreviations. Left justify and blank fill any unused portion.	
26 (176-178)	RESERVED: Not used by TRW. Blank fill.	
27 (179-208)	EXTRA LINE OF ADDRESS: If three lines of address are maintained for an account, this field should be utilized for city and state. Otherwise, blank fill.	

DATA RECORD ELEMENT DESCRIPTORS (Continued)

Field No. (Positions)	Field Name and Description	Comments
28 (209)	OCCUPATION CODE: Not used by TRW. If not used, blank fill.	
29 (210)	RESIDENCE: Not used by TRW. If not used, blank fill.	
30 (211-215)	RESERVED: Not used by TRW. Blank fill.	

A1 SEGMENT

This segment is designed to accommodate the Equal Credit Opportunity Act and applies to a condition where the party included has the *same* address information as the party described in the base segment.

Field No. (Positions)	Field Name and Description	Comments
1 (1-2)	SEGMENT IDENTIFIER: This field contains a constant of A1.	
2	ASSOCIATION CODE: Shows the association to the account of the individual described in this segment. 0 . . . . . Undesignated 1 . . . . . Individual Account 2 . . . . . Contractually Responsible 3 . . . . . Authorized User 4 . . . . . Joint Account 5 . . . . . Co-Maker 6 . . . . . "On Behalf Of" 7 . . . . . Maker Account T . . . . . Terminated	
3 (4-35)	FULL NAME: Must be in same format as the name contained in the Base Segment.	
4 (36-44)	SOCIAL SECURITY NUMBER: For the person specified in this segment.	
5 (45)	GENERATION CODE	
6 (46)	MARITAL STATUS: Not used by TRW.	
7 (47)	TRANSACTION TYPE: This code is used as a: processing key. 1 . . . . . New Account or First Time Associated 7 . . . . . Address and/or Association Code Change 4 . . . . . Existing Account Upgrade	
8 (48)	RESERVED FOR FUTURE USE: Blank fill.	

A2 SEGMENT

This segment also accommodates the ECOA but deals with the situation when the individual included in the segment has a *different* address than the individual described in the base segment.

Field No. (Positions)	Field Name and Description	Comments
1 (1-2)	SEGMENT IDENTIFIER: This field contains a constant of A2.	
2	ASSOCIATION CODE: Shows the association to the account of the individual described in this segment. 0 . . . . . Undesignated 1 . . . . . Individual Account 2 . . . . . Contractually Responsible 3 . . . . . Authorized User 4 . . . . . Joint Account 5 . . . . . Co-Maker 6 . . . . . "On Behalf Of" 7 . . . . . Maker Account T . . . . . Terminated	
3 (4-35)	FULL NAME: Must be in same format as the name contained in the Base Segment.	
4 (36-44)	SOCIAL SECURITY NUMBER: For the person specified in this segment.	
5 (45)	GENERATION CODE	
6 (46)	MARITAL STATUS: Not used by TRW.	
7 (47)	TRANSACTION TYPE: This code is used as a: processing key. 1 . . . . . New Account or First Time Associated 7 . . . . . Address and/or Association Code Change 4 . . . . . Existing Account Upgrade	
8 (48-50)	RESERVED FOR FUTURE USE: Blank fill.	
9 (51-82)	ADDRESS #1: This field contains the street number/name information for the person specified in this segment.	
10 (83-114)	ADDRESS #2: This field contains the city/state information for the person specified in this segment.	
(11) (115-120)	ZIP CODE: This field will contain the 5-digit numeric zip code.	

B1 SEGMENT

Field No. (Positions)	Field Name and Description	Comments
1 (1-2)	SEGMENT IDENTIFIER: This field contains a constant of B1.	
2 (3-4)	PAYMENTS PAST DUE: Number of payments this account is currently past due.	
3 (5-6)	MONTHS HISTORY: The number of months' history which have been reviewed to generate the information on this account.	
4 (7-8)	30 PAST DUE: Number of times past due 30 days for the period reviewed.	
5 (9-10)	60 PAST DUE: Number of times past due 60 days for the period reviewed.	
6 (11-12)	90 PAST DUE: Number of times past due 90 days for the period reviewed.	
7 (13-16)	RESERVED FIELD: Not used by TRW. Blank fill.	

C1 SEGMENT

Field No. (Positions)	Field Name and Description	Comments
1 (1-2)	SEGMENT IDENTIFIER: This field contains a constant of C1.	
2 (3-32)	COLLATERAL: This field will contain a description of collateral. It is free form.	

D1 SEGMENT

Field No. (Positions)	Field Name and Description	Comments
1 (1-2)	SEGMENT IDENTIFIER: This field contains a constant of D1.	
2 (3-12)	PHONE NUMBER: This field will contain the phone number (Area code + 7 digits) of the party described in the base segment.	
3 (13-18)	BIRTH DATE: This field will contain the date of birth (in MMDDYY format) of the party described in the base segment.	
4 (19-24)	RESERVED FIELD: Not used by TRW. Blank fill.	

EQUAL CREDIT OPPORTUNITY

§ 502. Findings and purpose

The Congress finds that there is a need to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status. Economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status, as well as by the informed use of credit which Congress has heretofore sought to promote. It is the purpose of this Act to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all creditworthy customers without regard to sex or marital status.

§ 503. Amendment to the Consumer Credit Protection Act

The Consumer Credit Protection Act (Public Law 90-321), is amended by adding at the end thereof a new title VII:

TITLE VII—EQUAL CREDIT OPPORTUNITY

§ 701. Prohibited discrimination; reasons for adverse action

(a) It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

(2) because all or part of the applicant's income derives from any public assistance program; or

(3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(b) It shall not constitute discrimination for purposes of this title for a creditor—

(1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness;

(2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness as provided in regulations of the Board;

(3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Board, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

(4) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

(c) It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to—

(1) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(2) any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Board;

if such refusal is required by or made pursuant to such program.

(d)(1) Within thirty days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

(A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

(B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification and, (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(4) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

(5) The requirements of paragraph (2), (3), or (4) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than 150 applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.

(6) For purposes of this subsection, the term 'adverse action' means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

§ 702. Definitions

(a) The definitions and rules of construction set forth in

this section are applicable for the purposes of this title.

(b) The term 'applicant' means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) The term 'Board' refers to the Board of Governors of the Federal Reserve System.

(d) The term 'credit' means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

(e) The term 'creditor' means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(f) The term 'person' means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(g) 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.

§ 703. Regulations

(a) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain but are not limited to such classifications, differentiation, or other provision, 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 or substantiate compliance therewith. In particular, such regulations may exempt from one or more of the provisions of this title any class of transactions not primarily for personal, family, or household purposes, if the Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this title. Such regulations shall be prescribed as soon as possible after the date of enactment of this Act, but in no event later than the effective date of this Act.

(b) The Board shall establish a Consumer Advisory Council to advise and consult with it in the exercise of its functions under the Consumer Credit Protection Act and to advise and consult with it concerning other consumer related matters it may place before the Council. In appointing the members of the Council, the Board shall seek to achieve a fair representation of the interest of creditors and consumers. The Council shall meet from time to time at the call of the Board. Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of such Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding $100 per day, including travel time. Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.

§ 704. 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 Reserve 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 Administrator of the National Credit Union Administration 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.

(7) The Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, and production credit association;

(8) The Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to brokers and dealers; and

(9) The Small Business Investment Act of 1958, by the Small Business Administration, with respect to small business investment companies.

(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. The exercise of the authorities of any of the agencies referred to in subsection (a) for the purpose of enforcing compliance with any requirement imposed under this title shall in no way preclude the exercise of such authorities for the purpose of enforcing compliance with any other provision of law not relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

(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 requirement 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, including the power to enforce any Federal Reserve Board regulation promulgated under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(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.

§ 705. Relation to State laws

(a) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this title: *Provided, however,* That this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.

(b) Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this title.

(c) Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit from the same creditor: *Provided,* That in any case where such a State law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

(d) When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States.

(e) Where the same act or omission constitutes a violation of this title and of applicable State law, a person agrieved by such conduct may bring a legal action to recover monetary damages either under this title or under such State law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.

(f) This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to credit discrimination, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Board may not determine that any State law is inconsistent with any provision of this title if the Board determines that such law gives greater protection to the applicant.

(g) The Board shall by regulation exempt from the requirements of sections 701 and 702 of this title 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 title or that such law gives greater protection to the applicant, and that there is adequate provision for enforcement. Failure to comply with any requirement of such State law in any transaction so exempted shall constitute a violation of this title for the purposes of section 706.

§ 706. Civil liability

(a) Any creditor who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

(b) Any creditor, other than a government or a governmental subdivision or agency, who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000, in addition to any actual damages provided in subsection (a), except that in the case of a class action the total recovery under this subsection shall not exceed the lesser of $500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(c) Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this title.

(d) In the case of any action under subsection (a), (b), or (c), the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

(e) No provision of this title imposing liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereby by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall be brought later than two years from the date of the occurrence of the violation, except that—

(1) whenever any agency having responsibility for administrative enforcement under section 704 commences an enforcement proceeding within two years from the date of the occurrence of the violation,

(2) whenever the Attorney General commences a civil action under this section within two years from the date of the occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

(g) The agencies having responsibility for administrative enforcement under section 704, if unable to obtain compliance with section 701, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted.

(h) When a matter is referred to the Attorney General pursuant to subsection (g), or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this title, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(i) No person aggrieved by a violation of this title and by a violation of section 805 of the Civil Rights Act of 1968 shall recover under this title and section 812 of the Civil Rights Act of 1968, if such violation is based on the same transaction.

(j) Nothing in this title shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought.

§ 707. Annual reports to Congress

Not later than February 1 of each year after 1976, 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 of this title is being achieved, and a summary of the enforcement actions taken by each of the agencies assigned administrative enforcement responsibilities under section 704.

§ 708. Effective date

This title takes effect upon the expiration of one year after the date of its enactment. The amendments made by the Equal Credit Opportunity Act Amendments of 1976 shall take effect on the date of enactment thereof and shall apply to any violation occurring on or after such date, except that the amendments made to section 701 of the Equal Credit Opportunity Act shall take effect 12 months after the date of enactment.

§ 709. Short title

This title may be cited as the 'Equal Credit Opportunity Act.'

Regulation B

(Effective through March 22, 1977)
Including Amendments through September 15, 1976

EQUAL CREDIT OPPORTUNITY

SECTION 202.1—AUTHORITY AND SCOPE

This Part comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to the Equal Credit Opportunity Act. (Pub. L. 93-495; 88 Stat. 1521 *et seq.*). This Part applies to all persons who regularly extend, offer to extend, arrange for or offer to arrange for the extension of credit for any purpose whatsoever and in any amount.

SECTION 202.2—GENERAL RULE

A creditor shall not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.[1, 27, 40]

SECTION 202.3—DEFINITIONS AND RULES OF CONSTRUCTION*

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

(a) **Act** means the Equal Credit Opportunity Act (Pub. L. 93-495; 88 Stat. 1521 *et seq.*).

(b) **Account** means any extension of credit; "use of an account" throughout this Part refers only to open end credit.

(c) **Applicant** means any person who applies to a creditor directly for an extension, renewal or continuation of credit, or who applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit. With respect to any creditor the term also includes any person to whom credit is or has been extended by that creditor.[3, 4]

(d) **Application** means an oral or written request by an applicant for an extension of credit which is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an existing credit plan to obtain an amount of credit which does not exceed a previously established credit limit.[3, 4, 41]

(e) **Arrange for the extension of credit** means to provide or offer to provide credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit participates in the decision to extend credit to an applicant. The term does not include participation in a credit transaction which is limited to honoring a credit card.[4, 34, 44]

(f) **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 or household purposes.

(g) **Contractually liable** means expressly obligated to repay all debts arising on an account by reason of having signed an agreement to that effect.[3, 28, 34, 37]

(h) **Credit** means the right granted by a creditor to an applicant to defer payment of a debt, or to incur debt and defer its payment or to purchase property or services and defer payment thereafter.[3]

(i) **Credit card** means any card, plate, coupon book or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property or services on credit.[41]

(j) **Creditor** means any person who regularly extends, renews or continues credit or arranges for the extension, renewal or continuation of credit. The term includes assignees, transferees or subrogees of an original creditor if they participate in the decision to extend credit, but does not include a person whose only participation in a credit transaction is to honor a credit card.[4, 44, 46]

(k) **Credit transaction** means every aspect of an applicant's dealings with a creditor including, but not limited to, solicitation of prospective applicants by advertising or other means; information requirements; investigatory procedures; standards of creditworthiness; terms of credit; furnishing of credit information and collection procedures.

(l) **Discriminate against an applicant on the basis of sex or marital status** means to treat an applicant less favorably than other applicants on the basis of sex or marital status.[27]

(m) **Extension of credit** means the granting of credit in any form and includes, but is not limited to, credit granted in addition to any existing credit or credit limit; credit granted in the form of a credit card, whether or not the card has been used; the refinancing of any credit; the consolidation of two or more obligations; the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the continuing in force of a previously issued credit card; or the continuance of existing credit without any special effort to collect at or after maturity.

(n) **Marital status** means the state of being unmarried, married or separated, as defined by applicable State law. For purposes of this Part, the term "unmarried" includes a person who is divorced or widowed.

(o) **Open end credit** means credit extended pursuant to a plan under which the creditor may permit the applicant 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. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(p) **Person** means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

*Note that for some purposes some of the definition are not identical with those found in 12 CFR 226 (Regulation Z).

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

SECTION 202.4—APPLICATIONS

(a) **Discouraging applications.** A creditor shall not make any statements to applicants or prospective applicants which would, on the basis of sex or marital status, discourage a reasonable person from applying for credit or pursuing an application for credit.

(b) **Separate accounts.** A creditor shall not refuse, on the basis of sex or marital status, to grant a separate account to a creditworthy applicant.[1, 12]

(c) **Inquiries as to marital status.** (1) A creditor shall not ask the applicant's marital status if the applicant applies for an unsecured separate account, except in a community property State or as required to comply with State law governing permissible finance charges or loan ceilings.[3, 7, 8, 23, 28, 33, 41, 43]

(2) If the creditor asks the applicant's marital status, only the terms "married," "unmarried" or "separated" shall be used.[1, 25, 27]

(3) Notwithstanding any other provisions of this subsection, a creditor may inquire as to the liability to pay alimony, child support or maintenance. Further, if a creditor first discloses to an applicant that income from alimony, child support or maintenance payments need not be revealed if the applicant does not choose to disclose such income in applying for credit, a creditor may inquire whether any income stated in an application is derived from such a source.[5, 7, 16, 33]

(4) Where an applicant is requested to designate a title (such as Mr., Mrs., Ms. or Miss), the creditor shall state conspicuously that the designation of such title is optional. An application form shall otherwise use only terms that are neutral as to sex unless other terms are required by an enforcement agency to monitor compliance with this Part.[29]

(d) **Equal Credit Opportunity Act notice.** (1) Except where application is made by telephone, or orally for an amount of credit to exceed an existing limit on an applicant's open end account, the creditor shall provide the application with the following notice in writing:

> The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal agency which administers compliance with this law concerning this (insert appropriate description—bank, store, etc.) is (name and address of the appropriate agency).

(2) Such notice shall be provided in a form that the applicant may retain, either:

(i) on a copy of the application form; or

(ii) on a separate sheet of paper delivered to the applicant at the time application is made, or delivered or mailed to the applicant as soon as practicable thereafter.[7, 10]

(3) Where two or more applicants jointly apply for credit, the creditor need furnish the notice required by paragraph (1) to only one of them. In determining which applicant shall receive the notice, the creditor may not select an applicant who is secondarily liable, such as an endorser, co-maker (when designated as a surety) or guarantor.[3, 6, 9, 13, 18, 43]

(e) **Designation of name.** A creditor shall not prohibit an applicant from opening or maintaining an account in a birth-given first name and surname or a birth-given first name and a combined surname.[11, 14, 33]

SECTION 202.5—EVALUATION OF APPLICATIONS

(a) **Continued ability to repay.** Except as otherwise provided in this section, a creditor may request and consider any information concerning the probable continuity of an applicant's ability to repay if such information is requested and considered without regard to sex or marital status.

(b) **Information about a spouse or former spouse.** (1) A creditor may request and consider any information concerning an applicant's spouse (or former spouse under (iv) below) which may be considered about the applicant if:

(i) the spouse will be permitted to use the account; or

(ii) the spouse will be contractually liable upon the account;[37] or

(iii) the applicant is relying on community property or the spouse's income as a basis for repayment of the credit requested;[3, 19, 23, 34] or

(iv) the applicant is relying on alimony, child support or maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.[41]

(2) A creditor may request the name in which an account is carried if the applicant discloses the account in applying for credit.[3, 26, 46]

(3) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.[22]

(c) **Alimony, child support and maintenance obligations.** A creditor may ask and consider whether and to what extent an applicant is obligated to make alimony, child support or maintenance payments.

(d) **Alimony, child support and maintenance income.** If a creditor first discloses to an applicant that income from alimony, child support or maintenance payments need not be revealed if the applicant does not choose to disclose such income in applying for credit, a creditor may inquire whether any income stated in an application is derived from such a source.[5, 16, 33]

(2) Where an applicant chooses to disclose alimony, child support or maintenance payments, a creditor shall consider such payments as income to the extent that such payments are likely to be consistently made. Factors which a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Fair Credit Reporting Act or other applicable laws.[15]

(e) **Discounting income.** A creditor shall not discount the income of an applicant or an applicant's spouse on the basis of sex or marital status. A creditor shall not discount income solely because it is derived from part-time employment, but may consider the probable continuity of such income in evaluating the creditworthiness of an applicant.[41]

(f) **Credit scoring.** A creditor shall not take sex or marital status into account in a credit scoring system or other method of evaluating applications.[20, 41]

(g) **Telephone listing in applicant's name.** A creditor shall not take into account the existence of a telephone listing in the name of an applicant in a credit scoring system or other method of evaluating applications. A creditor may take into account the existence of a telephone in the applicant's home.[33, 41]

(h) **Childbearing.** A creditor shall not request information about birth control practices or childbearing intentions or capability. Nor shall a creditor consider in evaluating the creditworthiness of an applicant aggregate statistics or assumptions relating to the likelihood of any group of persons bearing or rearing children, or for that reason receiving diminished or interrupted income in the future.[21, 27]

(i) **Change of name or marital status.** (1) Except as set forth in subsection (2) below, in the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions with respect to a person who is contractually liable on an existing open end account on the basis of a change of name or marital status:

(i) require a reapplication; or

(ii) require a change in the terms of the account; or

(iii) terminate the account.[3, 17, 18, 24]

(2) Where open end credit has been granted to an applicant based on income which is earned solely by the applicant's spouse, a creditor may require a reapplication on the basis of a change in marital status.[18, 24]

(j) **Credit history.** To the extent that a creditor considers credit history in evaluating applicants of similar qualifications for a similar type and amount of credit, a creditor shall include, in evaluating creditworthiness:

(1) the credit history of accounts designated under the requirements of section 202.6 as accounts which the applicant and a spouse are permitted to use or for which both are contractually liable, and, on the applicant's request, any information the applicant may present tending to indicate that such history does not accurately reflect the applicant's willingness or ability to repay; and

(2) on the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse which an applicant can demonstrate reflects accurately the applicant's willingness or ability to repay.

(k) **Use and retention of prohibited information.** A creditor may not use any information prohibited by the Act or this Part in evaluating applications. Retention of such information in the creditor's files does not violate the Act or this Part where such information was obtained:

(i) from any source prior to June 30, 1976; or

(ii) at any time from credit reporting agencies; or

(iii) at any time from the applicant or others, without the specific request of the creditor.[22, 27]

(l) **State property laws.** Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this Part.[31]

(m) **Notification of action taken and reasons for denial.** (1) A creditor shall, within a reasonable time after receiving an application, notify the applicant of action taken upon the application.[3, 4]

(2) A creditor shall provide each applicant who is denied credit or whose account is terminated the reasons for such action, if the applicant so requests.[6, 25, 33]

(3) A creditor may design its own form or methods to satisfy this requirement. An example of a possible form is set forth below.[25, 33]

STATEMENT OF REASONS FOR DENIAL OR TERMINATION OF CREDIT

1. _____ Credit application:
   _____not completed
   _____lack of credit references
   _____credit references too new to check
2. _____ Information furnished by:
   XYC Credit Bureau
   10 Main Street
   Anytown, Anystate 00000
   Phone no. 000-000-0000
3. _____ Employment:
   _____unemployed
   _____temporary or irregular
   _____unable to verify
   _____length of employment
4. _____ Income:
   _____insufficient
   _____unable to confirm
   _____information refused
5. _____ Residence:
   _____too short a period
   _____temporary
6. _____ Other (specify)
   _____
   _____

SECTION 202.6—FURNISHING OF CREDIT INFORMATION

(a) **Accounts established on or after June 1, 1977.** (1) for every account established on or after June 1, 1977, a creditor shall:

(i) determine whether the account is one which an applicant's spouse, if any, will be permitted to use or upon which both spouses will be contractually liable, if such accounts are offered by the creditor;[28] and

(ii) designate any such account to reflect the fact of participation of both spouses.[1, 11, 29, 46]

(2) When furnishing information to consumer reporting agencies or others concerning an account designated under this section, a creditor shall report the designation and furnish any information concerning the account:

(i) to consumer reporting agencies, in a manner which will enable the agencies to provide access to information about the account in the name of each spouse;[28] and

(ii) to recipients other than such agencies, in the name of each spouse.[28]

(b) **Accounts established prior to June 1, 1977.** (1) With respect to any account established prior to and in existence on June 1, 1977, a creditor shall either:

(i) not later than June 1, 1977, determine whether the account is one which an applicant's spouse, if any, is permitted to use or upon which both spouses are contractually liable; designate any such account to reflect the fact of participation of both spouses; and comply with the requirements of subsection (a)(2) above; or

(ii) mail or deliver to all applicants, or all married applicants, in whose name the account is carried on the creditor's records the notice set forth below. Such notice may be mailed with a statement or other mailing. All such notices shall be mailed by October 1, 1977. With respect to open end accounts, this requirement may be satisfied by mailing a notice to all accounts for which any statement is sent between June 1, 1977 and October 1, 1977. A creditor may supplement the notice as necessary to permit identification of the account.[1, 33, 46]

NOTICE
CREDIT HISTORY FOR
MARRIED PERSONS

The Federal Equal Credit Opportunity Act forbids all creditors from discriminating against any applicant on the basis of sex or marital status in any aspect of a credit transaction. Regulations adopted under the Act give married persons the right to have credit information concerning those credit accounts that they hold or use jointly with a spouse reported to consumer reporting agencies and creditors in the names of both the wife and husband. Accounts of married persons opened before June 1977—even those opened in the names of both spouses—are often reported in only the husband's name. This is generally true regardless of who has been paying the bills or whose income was used to obtain the account. As a result, many married women do not have a credit history in their own names, although their husbands do. If a woman ever needs to obtain credit on her own, for example, when divorced or widowed, a credit history is usually necessary.

If your account(s) with us is a joint account which you share with your spouse or an account(s) in the name of one spouse which the other spouse is authorized to use, you have the right to have credit information concerning it reported in both your name and your spouse's name. If you choose to have credit information concerning your account(s) with us reported in both your name and the name of your spouse, please fill in the statement below and return it to us.

Please note that the Federal regulation provides that your signature below will not make either you or your spouse legally liable for any different or greater debts. It will only request that credit information be reported in both your names.

When you furnish credit information on this account, please report all information concerning it in both our names as follows:

_____
(print or type)

_____ _____
Account Number (if any) (print or type)

_____
Signature of either spouse

(2) After June 1, 1977, a creditor shall, within 90 days of receipt of a request to change the manner in which information is reported to consumer reporting agencies and others, when furnishing information concerning any such account, designate the account to reflect the fact of participation of both spouses. The creditor shall report the designation and furnish any information concerning the account to any recipient other than a consumer reporting agency in the name of each spouse and, when reporting to consumer reporting agencies, in a manner which will enable such agencies to provide access to information about the account in the name of each spouse.[11, 46]

(3) A spouse's signature on a request to change the manner in which information concerning an account is furnished shall not change the legal liability of either spouse upon the account.

SECTION 202.7—REQUEST FOR SIGNATURE OF SPOUSE OR OTHER PERSON

(a) **General.** Except as provided in subsections (b) and (c) below, a creditor may not require the signature of a spouse or other person on a credit instrument unless such a requirement is imposed without regard to sex or marital status on all similarly qualified applicants who apply for a similar type and amount of credit.[2, 31, 32, 33, 35, 36, 37, 38, 40]

(b) **Unsecured credit in community property States.** Where a married applicant applies for unsecured credit in a community property State, a creditor may request or require the signature of a non-applicant spouse if:

(i) the applicable State law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) the applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to any community property.[1, 2, 28]

(c) **Signatures on certain instruments.** Where a married or separated applicant applies for secured credit, the creditor may require the signature of the applicant's spouse on such instru-

ments as are necessary, under the applicable statutory or decisional law of the State, or are reasonably believed by the creditor to be so necessary, to create a valid lien, pass clear title, waive inchoate rights to property or assign earnings.[3, 19, 23, 30, 33, 34, 35, 36, 38]

SECTION 202.8—SEPARATE ACCOUNTS IN RELATION TO STATE LAW

(a) **Separate extension of consumer credit.** Any provision of State law which prohibits the separate extension of consumer credit to each spouse shall not apply in any case where each spouse voluntarily applies for separate credit from the same creditor. In any case where such a State law is preempted, each spouse shall be solely responsible for the debt so contracted.[40, 42, 43]

(b) **Finance charges and loan ceilings.** When each spouse separately and voluntarily applies for and obtains a separate account with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible loan ceilings under the laws of any State or of the United States. Permissible loan ceilings under the laws of any State or of the United States shall be construed to permit each spouse to be separately and individually liable up to the amount of the loan ceiling less the amount for which both spouses are jointly liable. For example, in a State with a permissible loan ceiling of $1,000, if a married couple were jointly liable for $250, each spouse could subsequently become individually liable for $750.[39, 41]

SECTION 202.9—PRESERVATION OF RECORDS

(a) For a period ending 15 months after the date a creditor gives the applicant notice of action on an application, the creditor shall retain as to each applicant:

(1) the original or a copy of any application form and all other written or recorded information used in evaluating an application;[44] and

(2) a copy of recorded notation of the following if furnished the applicant in written form (or if furnished orally, and notation or memorandum made by the creditor):

(i) the notification of action taken, and

(ii) if applicable, the reasons for denial provided to an applicant in accordance with section 202.5(m);[45] and

(3) any written statement submitted by the applicant alleging discrimination prohibited by the Act or this Part.[3]

(b)(1) For a period ending 15 months after the date a creditor adversely changes the terms or conditions of credit for an account or terminates an account, the creditor shall retain as to each account, in original form or a copy thereof:

(i) any written or recorded information concerning such change or termination;[1] and

(ii) any written statement submitted by the applicant alleging discrimination prohibited by the Act or this Part.

(2) for purposes of paragraph (1), an adverse change in the terms or conditions of credit for an account does not include:

(i) a reduction of the credit limit on an account taken after the applicant has failed to make payment as provided in the credit agreement; or

(ii) a change in the terms or conditions of credit affecting all or a substantial portion of the creditor's accounts.

(c) Any creditor which has actual notice that it is under investigation for violation of this Part by an enforcement agency charged with monitoring that creditor's compliance with the Act and this Part, or which has been served with notice of an action filed pursuant to section 202.13 of this Part, shall retain the information required in subsections (a) and (b) above until final disposition of the matter or such earlier time as may be ordered by the agency or court.

SECTION 202.10—CERTAIN SPECIALIZED CREDIT

(a) **General.** Each type of credit referred to in subsections (b), (c), (d), and (e) below shall be subject only to section 202.1, the General Rule stated in section 202.2, to sections 202.3, 202.4(a), 202.4(b), 202.4(e), 202.11, 202.12, 202.13 and 202.14, and to the other provisions, if any, specified in the applicable subsections of this section. If a credit falls within more than one subsection of this section, all sections of this Part referred to in any such subsections shall apply unless the credit falls within subsection (d), in which case only the provisions specified in that subsection and this subsection (a) shall apply.[9]

(b) **Incidental credit.** Incidental credit shall be subject to the provisions specified in sections 202.10(a) and 202.5(h). As used in this Part, incidental credit is credit which meets all of the following requirements:

(1) the credit is not represented by and does not arise from the use of a credit card; and

(2) no finance charge as defined in section 226.4 of this Title (12 CFR 226.4 of Regulation Z), late payment or other fee is or may be imposed other than statutory interest or other costs recoverable in legal proceedings for the collection of the credit; and

(3) there is no agreement by which the credit may be payable in more than four installments.[9]

(c) **Business credit.** Business credit shall be subject to the provisions specified in sections 202.10(a), 202.5, 202.7 and 202.9, except that sections 202.5(m)(2), 202.5(m)(3) and 202.9 shall only apply in those transactions involving an application for credit in the amount of $100,000 or less where the applicant requests in writing that the creditor provide such reasons or retain such records. Sections 202.4(e) and 202.5(g) shall not apply to business credit extended in the name of a business firm. As used in this Part, business credit is credit granted for business, commercial or agricultural purposes.[3, 33]

(d) **Securities credit.** Securities credit shall be subject to the provisions specified in section 202.10(a), sections 202.5(a), 202.5(c) through 202.5(h), 202.5(j), 202.5(l), 202.5(m), 202.6(a) and 202.9. Section 202.4(e) shall not apply to a securities dealer insofar as the action described is taken to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregating of

accounts of spouses for the purpose of determining controlling interests, beneficial ownership or purchase limitations and restrictions. As used in this Part, securities credit is credit subject to regulation under section seven of the Securities Exchange Act of 1934 or credit extended by a broker or dealer who is subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(e) **Public utilities credit.** Public utilities credit shall be subject to the provisions specified in section 202.10(a) and to sections 202.5 and 202.7. As used in this Part, public utilities credit is credit extended pursuant to 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.

(f) **Credit under student loan programs.** Credit granted under student loan programs administered by the Department of Health, Education and Welfare or by State guarantee agencies shall be subject to all the provisions of this Part except that to the extent necessary or appropriate to ascertain and/or verify the applicant's material status and the financial resources of the applicant and the applicant's spouse, if the applicant is married, sections 202.4(c), 202.5(b) and 202.7(a) shall not apply.

SECTION 202.11—MISCELLANEOUS PROVISIONS

(a) **Mechanical errors.** If a failure to comply with sections 202.4(d), 202.5(j), 202.5(m) or 202.6 results from a mechanical, electronic or clerical error made in good faith, it shall not be a violation of the section if the creditor shows by a preponderance of the evidence that at the time of the noncompliance the creditor had established and was maintaining suitable procedures to assure compliance with the section.[46]

(b) **Inconsistent State laws.** Except as provided in section 202.8, this Part alters, affects or pre-empts only those State laws which are inconsistent with this Part, and then only to the extent of the inconsistency. Such a State law is not inconsistent with this Part if the creditor can comply with the State law without violating this Part.[4]

SECTION 202.12—ADMINISTRATIVE ENFORCEMENT

(a) As set forth more fully in Section 704 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 Governors of the Federal Reserve System, 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, Administrator of the National Credit Union Administration, Interstate Commerce Commission, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission and the Small Business Administration.

(b) Except to the extent that administrative enforcement is specifically committed to other authorities, Section 704 of the Act assigns enforcement of the Act and this Part to the Federal Trade Commission.

SECTION 202.13—PENALTIES AND LIABILITIES

(a) Sections 706(a) through (e) of the Act provide for civil liability for actual and punitive damages against any creditor who fails to comply with the Act and this Part. Section 706(b) places a $10,000 limitation on the amount of punitive damages an aggrieved applicant may seek in an individual capacity and Section 706(c) limits a creditor's class action liability for punitive damages to the lesser of $100,000 or 1% of the creditor's net worth at the time the action is brought. Section 706(c) provides that an aggrieved applicant may seek equitable relief in the nature of a permanent or temporary injunction, restraining order or other action. Section 706(e) further provides for the awarding of costs and reasonable attorney's fees to an aggrieved applicant who brings a successful action under Sections 706(a) through (d).

(b) Section 706(e) relieves a creditor from civil liability resulting from any act done or omitted in good faith in conformity with any rule, regulation or interpretation by the Board of Governors of the Federal Reserve System, or with any interpretation or approval issued by a duly authorized official or employee of the Federal Reserve System, notwithstanding that after such act or omission has occurred, such rule, regulation or interpretation is amended, rescinded or otherwise determined to be invalid for any reason.

(c)(1) Any request for formal Board Interpretation or official staff interpretation of Regulation B must be addressed to the Director of the Office of Saver and Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Each request for interpretation must contain a complete statement, signed by the person making the request or a duly authorized agent, of all relevant facts of the transaction or credit arrangement relating to the request. True copies of all pertinent documents must be submitted with the request. The relevance of such documents must, however, be set forth in the request and the documents must not merely be incorporated by reference. The requests must contain an analysis of the bearing of the facts on the issues and specifying the pertinent provisions of the statute and regulation. Within fifteen business days of receipt of the request, a substantive response will be sent to the person making the request or an acknowledgement will be sent which sets a reasonable time within which a substantive response will be given.

(2) Any request for reconsideration of an official staff interpretation of Regulation B must be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, within thirty days of the publication of such interpretation in the *Federal Register.* Each request for reconsideration must contain a statement setting forth in full the reasons why the person making the request believes reconsideration would be appropriate, and must specify and discuss the applicability of the relevant facts, statute and regulations.

Within fifteen business days of receipt of such request for reconsideration, a response granting or denying the request will be sent to the person making the request, or an acknowledgement will be sent which sets a reasonable time within which such response will be given.

(3) Pursuant to § 706(e) of the Act, the Board has designated the Director and other officials at the Office of Saver and Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this Part. This designation shall not be interpreted to include authority to approve particular creditors' forms in any manner.

(4) The type of interpretation issued will be determined by the Board and the designated officials by the following criteria:

(i) Official Board interpretations will be issued upon those requests which involve potentially controversial issues of general applicability dealing with substantive ambiguities in this Part and which raise significant policy questions.

(ii) Official staff interpretations will be issued upon those requests which, in the opinion of the designated officials, require clarification of technical ambiguities in this Part or which have no significant policy implications.

(iii) Unofficial staff interpretations will be issued where the protection of § 706.(3) of the Act is neither requested nor required, or where time strictures require a rapid response.

(d) Without regard to the amount in controversy, any action under this Title 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.

SECTION 202.14—TRANSITION PERIODS

Except as provided in section 202.6 with respect to that section, the provisions of this Part shall take effect as follows:

(a) Sections 202.1, 202.2., 202.3, 202.4(a), 202.5(a), 202.5(c), 202.5(h), 202.5(j), 202.5(k), 202.5(l), 202.7(c), 202.8, 202.9(c), 202.10, 202.11, 202.12, 202.13 and 202.14 shall take effect on October 28, 1975.

(b) Sections 202.4(b), 202.4(e), 202.5(d)(2), 202.5(e), 202.5(f), 202.5(g), 202.9(a) and 202.9(b) shall take effect on November 30, 1975.[33]

(c) Sections 202.5(i), 202.5(m), 202.7(a) and 202.7(b) shall take effect on January 31, 1976.

(d) Sections 202.4(c), 202.4(d), 202.5(b) and 202.5(d)(1) shall take effect on June 30, 1976.[3, 33]

Regulation B
EQUAL CREDIT OPPORTUNITY
STAFF OPINION LETTERS

NUMBER 1

You first inquired whether a creditor must offer joint accounts to married and unmarried individuals alike. It is staff's view that in general a creditor must offer joint accounts to unmarried individuals if it makes such accounts available to married couples. However, in our judgment certain distinctions may be made in the granting of such accounts without violating the basic intent of the ECOA and Regulation B, where disparate treatment is based on distinctions that arise by operation of State law, either statutory or decisional. For example, some credit policies can be justified on the basis of "family necessaries" doctrines or "family expense" statutes with regard to goods and services provided to one spouse for which the other can be held legally responsible. Thus, a creditor may offer joint accounts to a married couple where the applicant spouse is contractually liable and the nonapplicant spouse is given user privileges (and not to unmarried individuals). A creditor may also permit an account holder to establish use privileges for family members, while denying such a right to unmarried account holders who seek to extend use privileges to unrelated individuals. A creditor would also be permitted to require that unmarried joint applicants both be creditworthy in their own right, while continuing to offer joint accounts to a married couple even though only one spouse has income, or where most of the creditworthiness of the two derives primarily from the creditworthiness of one party to the marriage.

Further, a creditor need not comply with the reporting requirements of Section 202.6 as to a joint account held by unmarried individuals. The underlying purpose of that section and of Section 202.5(j) is to insure that credit history on joint accounts of married persons, which generally have been reported in only the husband's name, shall be available to both spouses. The reporting requirement is not universally applicable to all joint accounts.

Your second question is whether you may include in parentheses the words (single, divorced, and widowed) after the word "unmarried" on the application form.

Section 202.4(c)(2) sets forth three terms that may be used when an inquiry into marital status is permitted. The Board's intention was to implement Section 701(b) of the Act, which permits an inquiry of marital status "if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit, and not to discriminate in a determination of creditworthiness."

While the regulation would permit giving instructions to applicants as to the meaning of terms used on the application form, the proposed use of a parenthetical immediately after the term "unmarried" may invite applicants to indicate with more particularity the fact that they are divorced or widowed. You might accomplish the goal of instructing applicants without that side effect by locating the explanation in such a way as to make it clear to applicants that they are to indicate only that they are "unmarried."

With regard to the next item in your letter, concerning Section 202.7, Request for signature of a spouse or other person, the questions you raise about continuing guarantees are presently under staff review and will be responded to at a later date.

You refer to a different set of signature-related problems which arise in connection with purchase-price loans for consumer durables that are titled or registered. you note that one California statute, applicable to motor vehicle conditional sales contracts, requires that all agreements between buyers and sellers be contained in a single document. The creditor practice has been to combine the credit agreement and the security instrument into an integrated document, and to require that both spouses sign that document.

Staff concurs with your view that, where only one spouse applies for credit and the motor vehicle is to be registered in both names, it will be necessary to split the document into two parts, the first to consist of the credit instrument clauses (to be signed by the contractually liable spouse), and the second to relate to the security interest (to be signed by both spouses). Such a split would not on its face appear to conflict with the State requirement for one integrated contract between creditor-vendor and purchaser, and would permit compliance with Regulation B.

You next ask whether Regulation B requires a bank to offer an applicant a separate overdraft checking plan where the applicant is a party to a joint checking account.

While Section 202.2 of Regulation B forbids a creditor from discriminating on the basis of sex or marital status in the granting of credit, it does not require a creditor to offer specific types of accounts. Thus, a creditor would not be obliged to extend separate overdraft checking privileges where the underlying checking account is jointly held. However, Section 202.4(b) does prohibit a creditor from refusing on the basis of sex or marital status to grant a separate account to a creditworthy applicant. If the bank offers separate overdraft checking privileges along with the individual checking account necessary to obtain those privileges, it must offer them to all qualified persons without regard to sex or marital status.

Excerpts from FRB Letter of February 6, 1976, No. 45, by Janet Hart, Deputy Director.

NUMBER 2

We are writing in response to your letter regarding the application of the Equal Credit Opportunity Act (ECOA) and Regulation B (12 CFR 202) to certain creditor practices. Specifically, you ask whether a creditor may continue to require the signature of the spouse of a married guarantor.

Although the Act and Regulation B do not address this question directly, the ECOA and Regulation B apply to "every aspect of a credit transaction" (§ 701(a) of the Act; § 202.2 of Regulation B). Inasmuch as a guarantee is an integral part of a credit transaction, the prohibition against discrimination on the basis of sex or marital status must be observed when a creditor requires that a loan be guaranteed. In general terms, this means that a creditor cannot automatically require the spouse of a guarantor to join in the execution of a guarantee.

Specifically, Regulation B precludes a lender from requiring an applicant's spouse to execute a note or guarantee if an equally creditworthy unmarried applicant would not be required to obtain a guarantor. In a situation involving a guarantor who is married, Regulation B precludes a creditor from requiring the guarantor's spouse to join in the execution of the guarantee if an equally creditworthy unmarried guarantor would not be required to obtain a second signature.

When a corporation makes application for credit, the officers or principal shareholders are sometimes required to guarantee the loan. The staff is of the opinion that in this situation, married guarantors may not be required to provide the signature of their spouses, where no additional signatures would be sought from unmarried guarantors. Similarly, where the applicant is a partnership, spouses of partners may not be required to guarantee an obligation where unmarried partners are not required to obtain a guarantor.

You also inquired about the effect of the ECOA on a "continuing" guarantee executed prior to the effective date of the Act (October 28, 1975) in which a non-applicant spouse was required to join. A continuing guarantee is one which guarantees a line of credit and is executed in contemplation of a series of transactions between the creditor and the obligor. Such a guarantee may remain in effect for an indefinite period or for a given period. It is our view that a creditor may continue to rely upon such a guarantee provided the line of credit has not been renegotiated or the creditworthiness of the obligor reevaluated subsequent to October 28, 1975. If a renegotiation or reevaluation has occurred after October 28, the transaction would of course become subject to the ECOA, and the guidelines expressed above would apply.

Applying Regulation B to guarantees executed in community property States, creditors have voiced concern over the possibility that access to community assets will be lost after divorce, unless a guarantee is received from a non-applicant spouse. One of the purposes of the ECOA is to make separate credit more readily accessible to married women. In view of this purpose, § 202.7(b) of Regulation B provides that in a community property State, a creditor may not require the signature of the non-applicant spouse if the applicant is enpowered by State law to manage and commit community assets. The staff is of the opinion that permitting a creditor to obtain the signature of the non-applicant spouse in all cases would defeat the intent of Congress as expressed in the Act.

It should be noted, however, that where the separate assets or income of a spouse are pledged or used to establish creditworthiness, the spouse may be required to sign the note or execute a guarantee. Also, where a spouse's offer to guarantee the loan is truly voluntary, creditors should permit the spouse to undertake this obligation.

Excerpts from FRB Letter of July 23, 1976, No. 73, by Anne J. Geary, Senior Attorney.

NUMBER 3

This is in response to your letter *** in which you asked a number of questions. Your questions are answered seriatim.

1. QUESTION: Does the definition of "applicant" in Section 202.3(c) include a cardholder's use of a credit card to make a purchase which would exceed the established credit limit where the cardholder has not contacted the creditor either orally or in writing? Would the purchase constitute an "application" for credit under 202.3(d)?

RESPONSE: Yes to both questions. A cardholder would be making application each time he or she used a credit card for an amount which exceeded the cardholder's established credit limit, where the application were made directly to a retail creditor or indirectly to a bankcard issuer.

2(a). QUESTION: Would a spouse who signed an open end credit agreement or who impliedly agreed to be bound thereunder as a user be "contractually liable" under such an agreement as the term "contractually liable" is defined in Section 202.3(g)?

RESPONSE: A spouse would be "contractually liable" in an open end account if he or she signed an agreement to that effect but not by the mere use of a credit card issued pursuant to that account.

(b). QUESTION: Is a co-signer, endorser, surety or guarantor "contractually liable" within the meaning of Section 202.3(g)?

RESPONSE: All such obligors would be "contractually liable" provided they signed an agreement to that effect. This would be true even as to those parties who are only secondarily liable.

3. QUESTION: Would a part who is "contractually liable" be a co-applicant in every instance?

RESPONSE: Not necessarily. It would depend on whether the second obligor intended to initiate the request for credit along with the other applicant or whether the creditor imposed the requirement of a second obligor after the application was made. In the latter instance, the second party would not be a co-applicant. Of course, if a creditor wished to consider all contractually liable parties to be co-applicants, it could do so since the status of being a "co-applicant" confers the benefits of the regulation but does not increase the second party's obligations under the credit agreement.

4. QUESTION: Where a party who is contractually liable is a co-applicant within the context of Section 202.3(c), may a creditor require such a party to submit a separate application independent of the other applicant?

RESPONSE: A policy of requiring contractually liable co-applicants to submit separate applications would not be affected by Regulation B as long as there were no substantive differences in the application forms provided to the applicants.

5. QUESTIONS: Would the definition of "credit" (Section 202.3(h)) include a situation in which a bank allows a customer to overdraw a checking account not by pre-arrangement with the right to impose a finance charge but as an accommodation with the expectation of prompt repayment?

RESPONSE: Such an accommodation by a bank would not constitute "credit" as defined in the regulation.

6. QUESTION: In determining whether a creditor may inquire as to marital status under Section 202.4(c)(1), should the creditor look to the State of the applicant's residence or the State of the creditor's domicile for purposes of applying this section of the regulation?

RESPONSE: The reason for the community property exception to the restriction on marital status inquiry is because community property statutes affect a creditor's rights to the assets that a married applicant may rely on to qualify for credit. Since it is the State of the applicant's domicile or, in the case of real property, the State in which the property is located which would determine whether the applicant's assets will be held either as community property or individually, the creditor should look to the law of those States for purposes of applying this section of the regulation. In other words, unless the applicant is either domiciled or owns real property in the State in which the creditor is domiciled, the creditor may not look to its own State for purposes of applying Section 202.4(c)(1). A creditor may, however, unless instructed otherwise by the applicant, assume that the applicant is domiciled in the State in which he or she resides.

7. QUESTION: Is the ECOA notice set forth in Section 202.4(d) required only where an applicant submits a written application or is it required every time there is an extension of credit?

RESPONSE: Section 202.4(d) provides two exceptions to the ECOA Notice requirement. Where the application is made by telephone, or where it is made orally for an amount of credit to exceed an existing limit on an applicant's open end account, the notice need not be provided. The presentation of a credit card for an amount to exceed an existing credit limit would be considered an oral request not necessitating the delivery of the notice. Also, in those cases where a creditor initiates an extension of credit without being requested to do so by the applicant, such as by allowing a previously issued credit card to continue in force beyond its expiration date or by refraining from making a special effort to collect an existing loan after maturity, the notice would not be required since the borrower would not have made application for those additional extensions of credit.

8. QUESTION: May a creditor in a community property State require an applicant applying for an individual extension of credit based solely upon his or her earnings to list the obligations of the non-applicant spouse?

RESPONSE: Section 202.5(b)(1)(iii) permits a creditor to ask for any information about an applicant's spouse as may be required of the applicant where an applicant is relying on community property as a basis for repayment. Since the applicant's income would be community property, the creditor may request any information about the applicant's spouse, including the spouse's outstanding obligations.

9. QUESTION: May a creditor inquire as to the address of the non-applicant spouse or former spouse when an applicant indicates reliance on accounts which are maintained in such spouse's names pursuant to Section 202.5(b)(2)?

RESPONSE: Section 202.5(b)(2) permits a creditor to request the name in which an account is carried if the applicant relies on the account in applying for credit. The purpose of this provision is to enable the creditor to gain access to the credit history of that account when maintained in a name other than that of the applicant. If it is necessary to have the address of the person in whose name the account is maintained in order to assess the credit history, a request for such information would be permissible.

10. QUESTION: May a creditor recommend that a recently separated or divorced cardholder cancel the account and reapply for a new one where his or her spouse or former spouse, as an authorized user, continues to use the account without the permission of the cardholder?

RESPONSE: In the situation described above, it would appear that Section 202.5(i) does not apply because the creditor is not requiring a reapplication but rather suggesting that the cardholder cancel and existing account in order to avoid liability for the unauthorized use of a credit card by a separated spouse. This practice would not violate Regulation B unless, of course, the creditor made the reapplication mandatory under the same circumstances.

11. QUESTION: May a creditor in a community property State require a recently separated applicant to reapply for credit pursuant to Section 202.5(i)(2) where the applicant's earnings alone, in the absence of updated credit information, would not meet the creditor's minimum standards of creditworthiness?

RESPONSE: The criterion for requiring a reapplication under Section 202.5(i) is evidence of the applicant's inability or unwillingness to repay. If the creditor has information in its files which indicates that a recently separated cardholder does not have the ability to repay on the basis of his or her individual earnings, such infortmation would constitute sufficient evidence of inability to repay to warrant a request for a reapplication. Subsection (2) would not be applicable in the example you provided because the applicant did not rely solely on the income of the non-applicant spouse in qualifying for credit.

12. QUESTION: Is a creditor required to provide the notification under Section 202.5(m) to each applicant for an extension of credit, including every party who is contractually liable for the obligation?

RESPONSE: Section 202.5(m) would require that only one notification of action taken or reasons for denial be provided for each application filed, regardless of the number of co-applicants involved. Such notification must be provided each time a creditor takes action on an application for an "extension of credit," as that term is defined in Section 202.4(m).

13. QUESTION: May a creditor delay action on an application due to insufficient information furnished by the applicant?

RESPONSE: Section 202.5(m)(1) requires a creditor to notify an applicant of action taken within a reasonable time after receiving the application. A delay in acting on an application because of insufficient information provided by the applicant would not violate this section as long as appropriate efforts were made to obtain the necessary information and take action within a reasonable time thereafter.

14. QUESTION: Under Louisiana law, when a married woman enters into a real estate loan in her own name secured by community property the husband must be a party to the note and the mortgage must be captioned as follows: "Jack Smith and Mary Jones (maiden name), wife of Jack Smith." Would Regulation B permit a creditor to comply with these requirements?

RESPONSE: As you noted in your letter, Section 202.7(c) would permit a creditor to require the husband to sign the note and the mortgage. Since the recording procedure is also a provision of State property law, it would appear that a creditor may comply with the State law without violating Regulation B.

15. QUESTION: When does the 15 month record retention period begin for business creditors? Section 202.9(a) provides that creditors must retain records for 15 months following the date the creditor furnishes notice of action taken but Section 202.10(c) does not require business creditors to furnish applicants with notice of action taken.

RESPONSE: You have apparently received one of the earlier printings of Regulation B which contained an error in Section 202.10(c). The corrected ver-

sion requires business creditors to comply with all of Section 202.5, including the requirement of furnishing notice of action taken and reasons for denial. The commencement of the retention period would, therefore, be the same for business creditors as provided in Section 202.9(a), the date of notice of action taken on an application.

16. QUESTION: Will delayed implementation of certain provisions of the regulation protect creditors from civil liability prior to the effective date of such provisions under Section 202.14?

RESPONSE: This is a question that is within the discretion of the courts. Certainly no administrative agency would take any action to enforce provisions of the regulation prior to their effective date. As to private causes of action, since it is mostly procedural requirements that have been delayed, it is unlikely that a court would find that failure to comply with such requirements prior to their effective date would constitute an act of discrimination.

Excerpts from FRB Letter of November 25, 1975, No. 6, by Lewis H. Goldfarb, Director/Counsel, ECOA Task Force.

NUMBER 4

I am writing in response to your letter *** relative to the applicability of Regulation B to transactions involving multiple creditors.

Your inquiry is on behalf of bank clients who finance home improvements or auto sales made by a given dealer. The dealer asks questions of an applicant and completes a credit application form, then relays the information to the bank. The bank checks credit history with a credit bureau, and decides whether or not to extend credit. The decision is communicated to the applicant by the dealer.

The applicant has no direct dealings with the bank until the home improvement project is substantially completed or the car is available, at which time the applicant gets in touch with the bank. In the situation you describe, the dealer directs all applications to a single bank, and does not participate in the credit decision.

All your questions, and our responses thereto, are made in the context of the above-stated facts. The first two questions deal with the issue of whether the consumer becomes an applicant only when the direct application is made to the bank, Even though in Section 202.3(c), "applicant" is defined in terms of a person who applies to a creditor "directly," it is staff's view that the Section 202.3(d) definition of "application" is defined as

> "... an oral or written request by an applicant for an extension of credit which is made in accordance with procedures established by a creditor for the type of credit requested."

In our judgment, where the bank takes an application (acting through an agent), evaluates creditworthiness, and approves credit contingent on a substantial completion of the home improvement (or availability of the automobile), the bank is for all intents and purposes a creditor as to the consumer at least from the time the credit application is relayed by the dealer to the bank.

In the third question, you ask whether and to what extent, a bank could be held accountable for a dealer's noncompliance with Regulation B.

It is staff's view that to the extent the dealer acts as an agent for the bank, the bank is responsible for monitoring the dealer's conduct. While the bank would not be required to assume the role of guarantor, the bank would be expected to take reasonable measures to insure the dealer's compliance with the regulation. Regulation B does not address itself to this issue, but for purposes of analogy, we call your attention to Section 202.11(b), which provides that as to a failure to comply with certain sections of the regulation, resulting from mechanical, electronic, or clerical errors made in good faith "... it shall not be a violation of the section if the creditor shows by a preponderance of the evidence that at the time of noncompliance the creditor had established and was maintaining suitable procedures to assure compliance with the section."

Assuming that the dealer does not participate in the decision to extend credit, your next question then asks whether it can be assumed that the dealer does not "arrange for the extension of credit" under the Section 202.3(e) definition, and is therefore not a creditor under Section 202.3(j).

Staff would concur with your view in those situations where the dealer's role is limited to handing out loan application forms. If its role is less passive, the answer would likely depend on the facts of the case, as in the hypothetical situation which you posed in Question 3, where a dealer might inform an applicant or agree to sign the note, in order to assure swifter bank approval or so that the dealer would not have to ask as many questions concerning solely owned assets. It is arguable that in such circumstances a dealer may be held to have so projected itself into the credit transaction as to have lost its noncreditor status.

Your next question asks how Section 202.5(m), Notification of Action Taken and Reasons for Denial, applies to transactions where there are multiple creditors. The question of whether a joint notification will satisfy the requirement is presently under study, and we will advise you as soon as a position has been developed on the matter.

Your final question seeks guidelines for complying with Section 202.7(a). We enclose a copy of a letter which presents staff views as to interpretation of that section, which we hope will be helpful to you.

Excerpts from FRB Letter of February 25, 1976, No. 55, by Janet Hart, Deputy Director.

NUMBER 5

This letter is in response to your letter *** asking whether your installment loan note application complies with Regulation B. As you know, the Board does not pass on whether forms are in compliance with the regulation, and therefore the statement which appears below is only a suggested improvement.

Although the disclosure that "alimony or child support or maintenance payments are optional information and need not be revealed if the applicant does not choose to rely on such income in applying for credit" appears on the face of the application, the placement of the disclosure could be construed as misleading, since the applicant could overlook the warning that revealing such information under "additional income" is optional. So as not inadvertently to solicit information which is not needed, we suggest placing this statement just prior to soliciting information on "additional income."

Excerpts from FRB Letter of November 20, 1975, No. 2, by Janet Hart, Deputy Director.

NUMBER 6

This is in response to your letter *** in which you ask whether a combination of disclosures under the Fair Credit Billing Act, T.I.L., and Regulation B would be in compliance with the above mentioned regulations with respect to your open-end credit card program.

Your first proposal is to place the Equal Credit Opportunity Act notice required under Section 202.4(d) directly under the Fair Credit Billing notice which is on the reverse side of your current Truth in Lending Act disclosure form. This form is sent to all approved applicants at the time they are notified of approval.

A review of Board and staff interpretations as to Truth in Lending and Fair Credit Billing disclosures and of the intent and purpose of Section 202.4(d) of Regulation B indicates that the placing of this notice as indicated above would be in compliance with Regulation B, Fair Credit Billing regulations, and the T.I.L. regulations so long as the Fair Credit Billing and T.I.L. disclosures are clear and conspicuous as required by Section 226.7(a) of Regulation Z.

Your second proposal is to place the Equal Credit Opportunity Act notice required under Section 202.4(d) of Regulation B at the bottom of a statement which incorporates the disclosures required by the Fair Credit Reporting Act and also the reasons for denial, required under Section 202.5(m) of Regulation B, for all applicants who are denied credit. It is assumed that the application is processed and the form furnished to the applicant within a reasonable time after receipt of the application. After discussions with staff of the Federal Trade Commission's Bureau of Consumer Protection who has enforcement responsibility with respect to the Fair Credit Reporting Act, we see no reason why your proposal would not be in compliance with Section 202.4(d)(2)(ii).

Excerpts from FRB Letter of November 24, 1975, No. 3, by Janet Hart, Deputy Director.

NUMBER 7

This letter is in reponse to your request ***. The Board does not ceritfy that forms are in compliance with the regulation, and therefore the statements which appear below are only suggested improvements.

A review of your Retail Installment Loan application forms gives rise to the following comments:

1. Section 202.4 provides that a creditor shall not ask the applicant's marital status if the applicant applies for an unsecured separate account, except in a community property State or as required to comply with State law governing permissible finance charges or loan ceilings. From the face of your loan application form, we are unable to determine whether it relates to an unsecured loan, in which case inquiries into marital status would not be permitted under Section 202.4(c)(1), or an application for a secured loan, in which case Section 202.7(c) allows a creditor to require the signature of the applicant's spouse on such instruments as are necessary under the applicable statutory or decisional law of the State or are reasonably believed by the creditor to be necessary to create a valid lien, pass clear title, or waive inchoate rights to property.

2. Section 202.4(c)(3) provides that a creditor may inquire as to whether any income stated on an application is derived from alimony, child support or maintenance payments if the creditor *first* discloses to an applicant that such income from such sources need not be revealed if the applicant does not choose to rely on it. The Retail Installment Loan application form does not appear to make that disclosure on its face. Only with the proper disclosure would an applicant who elected not to reveal the receipt of alimony or child support be aware before reaching this section of the application that such information would not, in fact, be required in the applicant's case.

Some creditors are meeting the requirements of Section 202.4(c)(3) by printing at the first point where information about alimony or child support is sought (probably the item relating to "other income" in your case) language to the following effect:

"Income from alimony or child support need not be revealed if you do not choose to rely upon it as a basis for undertaking (or repaying) this obligation.

3. The Retail Installment Loan application form does not contain the Equal Credit Opportunity Act notice required under Section 202.4(d) and which must be provided in a form the applicant may retain, either on a copy of the application, or on a separate sheet of paper delivered to the applicant at the time application is made, or delivered or mailed to the applicant as soon as practicable thereafter.

Based upon our limited exposure to such forms, we have no other suggestions at this time. However, staff will continue to evaluate problems in this area and may in the future submit formal interpretations to the Board for its consideration. If adopted by the Board, such interpretations would be published in the Federal Rgister.

Excerpts from FRB Letter of December 4, 1975, No. 10, by Janet Hart, Deputy Director.

NUMBER 8

I am writing in response to your letter *** in which you ask whether Regulation B is applicable where a creditor seeks to inquire regarding marital status in order to furnish proper information to an insurer.

The presumption is that Regulation B does not apply to premiums on automobile insurance policies, which frequently take marital status into account in rate determinations, and that therefore an inquiry on marital status is proper as to the insurer. Your question, which relates solely to casualty or property insurance on vehicles is whether such an inquiry therefore becomes proper for the creditor as an agent of the insurer.

It is the opinion of staff that in the majority of cases where such a question could arise, the creditor would be entitled to make the inquiry in its own right. We surmise that where a creditor is selling property insurance on the vehicle that is the subject of a sale, the sale will represent a secured credit transaction. The creditor would therefore impliedly be permitted to make the inquiry under Section 202.4(c)(1), which prohibits such inquiries only as to unsecured credit extensions.

If the sale is not a secured credit transaction, however, but rather a cash sale, then Regulation B would have not applicability, and no conflict could arise in making the inquiry on behalf of the insurer.

Excerpts from FRB Letter of December 19, 1975, No. 16, by Janet Hart, Deputy Director.

NUMBER 9

This is in response to your letter *** in which you presented the following questions:

1. Does the sale of classified advertising by a newspaper where the client does not pay until after the advertising has been run generally qualify as incidental credit?

2. Does such sale lose the status of incidental credit if the newspaper offers a discount for prompt payment?

3. Is a telephone application for credit, even where the applicant does not have an existing account, exempt from the notice of provisions of 202.4(d)?

In response to your first question whether credit extended in connection with newspaper sales of consumer classified advertising qualifies as incidental credit, Section 202.10(b) provides that incidental credit is credit which meets all of the following requirements:

1. The credit is not represented by and does not arise from the use of a credit card.

2. No finance charge, as defined in Section 226.4 of Regulation Z, late payment or other fee is or may be imposed other than statutory interest or other costs recoverable in legal proceedings for collection of the credit.

3. There is no agreement by which the credit may be payable in more than four installments.

Assuming the procedures stated in your letter reflect industry practices, such credit extension would qualify as incidental credit. However, such sales of classified advertisements would lose their incidental credit status if the newspaper gave a discount for prompt payment. Section 226.4(a)(1) of Regulation Z states that, except as otherwise provided, 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 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 amounts payable under a discount or other system of additional charges. Staff believes the same principles would be applicable under Regulation B.

You also asked whether telephone applications for credit are exempt from the notice provisions of 202.4(d) even where the applicant does not have an existing account. You will note from reading Sections 202.10(a) and (b) that Section 202.4(d) is excluded from the sections of the regulation to which "incidental credit" is subject. Accordingly, in extending credit which falls within the definition of "incidental credit," a creditor is not required to comply with Section 202.4(d) relating to the Equal Credit Opportunity Act notice.

Excerpts from FRB Letter of December 19, 1975, No. 17, by Janet Hart, Deputy Director.

NUMBER 10

This letter is in response to your correspondence *** in which you ask whether a post-application ECOA notice disclosure to be furnished as described below would comply with Section 202.4(d) of Regulation B.

Your first proposal is to place the notice on the application form of Master Charge accounts and deliver the specified notice to the applicant at the time the plastic is delivered, possibly including the notice in the TIL Disclosure statement. This form would be delivered within 5-15 days following an affirmative decision by the bank. If an application for a Master Charge account is declined, the notice would be a part of the "decline letter" tendered under the Fair Credit Reporting Act, as described below with regard to decline of applications for general loan accounts.

A review of Board and staff interpretations as to Truth-in-Lending and Fair Credit Billing disclosures and of the intent and purpose of Section 202.4(d) of Regulation B indicates that the placing of this notice as indicated and delivery within time designated would be in compliance with Regulation B, Fair Credit Billing regulations and the TIL regulations so long as the Fair Credit Billing and TIL disclosures are clear and conspicuous as required by Section 226.7(a) of Regulation Z. The ECOA notice should also, of course, be clear and conspicuous.

With respect to general loan accounts you proposed printing the notice on the application form and delivering to the applicant the specified notice in one of the following ways:

1. When the loan request as presented is declined, the notice would be a part of the "decline letter" tendered under the Fair Credit Reporting Act, which would be mailed two to five days after the Bank's loan decision.

2. When the loan request as presented is approved, the notice would be printed (exclusively) on the first "page" of the payment coupon book, just under the cover page, which payment coupon book would be mailed seven to fifteen days after the Bank's loan decision; or the notice would be printed on a payment authorization card (where payments are to be debited against a checking account—in which case a payment coupon book would NOT be used) and a copy of the payment authorization card would be delivered at the time of the Bank's loan decision or at the time the debt instrument is executed.

After discussions with staff of the Federal Trade Commission's Bureau of Consumer Protection, which has enforcement responsibility with respect to the Fair Credit Reporting Act, we see no reason why your proposal to include the ECOA notice disclosure as part of Fair Credit Reporting Act "decline letter" would not be in compliance with Section 202.4(d)(2)(ii) of Regulation B and the Equal Credit Opportunity Act, assuming that the application is processed within a reasonable time and that there are no delays because of sex or marital status.

To be consistent with Board interpretations under Regulation Z that the giving of disclosures should bear some reasonable relationship in time to the transaction, and assuming no delays in the loan application process because of sex and marital status, the seven to fifteen day time period indicated in your second alternative to the approvals of general loan accounts represented by a payment coupon book would be a reasonable equivalent to the Regulation requirement that notice be given as soon as practicable after application.

Your final alternative is to print the notice on the payment authorization card, where payment coupon books are not used. In this situation a copy of the payment authorization card would be delivered at the time of the bank's loan decision or at the time the debt instrument is executed. Again assuming no delays occurred because of sex or marital status, the delivery of notice as specified if within a reasonable time after receipt of the application would appear to comply with the requirements of the regulation assuming that the authorization card contain no extraneous material or advertising and the notice is clear and conspicuous.

Excerpts from FRB Letter of December 24, 1975, No. 22, by Janet Hart, Deputy Director.

NUMBER 11

I am writing in response to your letter *** in which you inquire whether your client, a bankcard association, is required under Regulation to open and maintain a joint open-credit account in different surnames.

Your view is that section 202.4(e) speaks in terms of "applicant" and not "applicants" with regard to name designation, and that therefore a creditor is not required to open or maintain a single account in the names of William Smith and Mary Jones (or Mary Jones-Smith), for example. It is the view of staff that use of the singular in that section does not of itself dispose of the question. However, staff interpretation of sections relating to joint accounts indicates that a creditor is not required to create two separate files for a joint account. The separate-files issue has arisen in the context of Section 202.6 requirements on furnishing of credit information. It is the view of staff that a single file may be maintained so long as it is noted that each spouse is entitled to a credit history of the account, and so long as it is possible to retrieve the information as to either, after giving the name in which the account is carried and any other identifying information that may be needed for this purpose.

Excerpts from FRB Letter of January 9, 1976, No. 34, by Janet Hart, Deputy Director.

NUMBER 12

The three questions presented in your letter *** have been reviewed by our staff. We hope the following discussion of these problems will be of assistance to you in advising your clients.

You first inquire whether you may ask if a credit applicant is married before determining whether the credit will be secured or unsecured. In requiring that separate credit be made available to each spouse individually upon request, Section 202.4(b) of Regulation B contemplates that a creditor will first consider, if such credit is requested whether the separately held assets of the applicant are sufficient to establish creditworthiness. If your client finds that the separately held assets of an applicant do not sufficiently establish creditworthiness for the amount or type of credit sought, such alternatives as the procurement of a cosigner or the listing of other assets may be pursued. If, in listing additional assets either as potential security for a loan or merely as a basis on which to establish creditworthiness, jointly held property is named, a creditor may investigate the other ownership interests in the applicant's assets. Should some of them be held jointly with a spouse, a creditor is justified in determining the exact nature of the spousal property interest under the provisions of Section 701(b) of ECOA.

In answer to your second inquiry, the same schematic for discovery of a creditor's potential rights and remedies in a credit transaction would apply to a partially secured loan. When it is discovered that an asset which is to be pledged or relied upon to establish creditworthiness is jointly owned, the nature of such joint ownership may be explored by the lender.

Your third question relates to a situation in which an applicant is relying upon an unpledged asset to establish creditworthiness in a State where, during marriage, assets are generally held by husband and wife as tenants by the entirety.

Assuming this to be the case, for example, in Pennsylvania, married applicants may nonetheless have separate assets that would be sufficient to justify a particular loan. To allow for such contingenies, the possibility of extending credit in reliance upon such separate assets should be explored initially, if separate credit is requested. If there are insufficient separate assets, a creditor could then investigate the nature of the property rights of a nonapplicant in jointly held property upon which the applicant was relying to establish creditworthiness.

Once it had been determined that an applicant would not qualify for the type or amount of credit requested based upon separately held assets, it would not seem to be violative of Regulation B to require an applicant who wished to rely upon other assets in order to qualify for credit to designate how such assets are held (as in the example you present on page two of your letter).

Excerpts from FRB Letter of February 20, 1976, No. 51, by Janet Hart, Deputy Director.

NUMBER 13

This is in response to your letter regarding the requirement under § 202.4(d) of Regulation B to deliver the Equal Credit Opportunity Act notice in transactions involving two or more creditors. You ask whether each entity which participates in the transaction must provide a separate notice to the applicant. Further, if a single notice will satisfy the requirement of Regulation B, who should give the notice and which agency should be named therein?

The Board's staff is aware that in attempting to comply with § 202.4(d), many creditors are encountering mechanical problems. This letter is intended to provide guidelines of general applicability to deal with the mechanical problems that arise due to the involvement of multiple creditors.

Transactions involving multiple creditors arise in a variety of contexts. Such transactions frequently occur, for example, in connection with applications for bank credit cards; in the retail financing of automobiles and other major purchases by means of dealer paper; and in real estate loan guarantee programs.

The function of the Equal Credit Opportunity Act notice is educational; the notice itself creates no substantive rights. Section 202.4(d) makes each creditor responsible for providing the notice to an applicant. However, in view of the notice's function, it is the staff's opinion that where a transaction involves two or more entities, only one notice need be provided and any one of the creditors may provide it. As explained in Public Information letter #35, the creditors should make suitable arrangements as to which one will provide the notice to the applicant. Delivery of the notice may be made by the creditor directly, or indirectly through another party to the transaction. The notice should identify the agency responsible for enforcement of the Act with respect to the creditor named in the notice. To the extent that this staff position expressed in Public Information letter #58 the earlier letter is superseded.

The notice may be printed on the application form (and a copy of the form given to the applicant to keep), or on a separate sheet of paper. Where applications are routinely submitted to several financing sources by a retail dealer, the notice may refer to the retail dealer as the creditor and the Federal Trade Commission as the dealer's enforcement agency. Where several banks or financing sources adopt a universal form for loan applications received through one or more dealers, the notice may refer to a check list with reference to the appropriate agency for each lender.

A notice will satisfy the requirement of § 202.4(d) if it contains substantially the same information as contained in the notice set forth in the regulation. As explained in a recent Board interpretation of § 202.4(d) (41 Federal Register 13579; March 31, 1976), a creditor may add to or modify the notice to refer to a State Equal Credit law or to a State enforcement agency, in order to comply with State law or regulation. In addition, the staff believes that a creditor may if it wishes modify the notice to indicate that after March 23, 1977, the Equal Credit Opportunity Act will prohibit discrimination in credit on the basis of race, color, religion, national origin, age, receipt of public assistance or the exercise of rights under the Consumer Credit Protection Act.

Excerpts from FRB Letter of May 6, 1976, No. 69, by Anne J. Geary, Senior Attorney.

NUMBER 14

As you requested in your letter ***, I am writing to confirm the details of our telephone conversation regarding § 202.4(e) of Regulation B.

Section 202.4(e) provides that a creditor may not prohibit an applicant from opening or maintaining an account in a birthgiven first name and a surname or a birthgiven first name and combined surname. You ask whether a creditor may require that all accounts opened or maintained by a customer be carried in the same name. *** Bank proposes to adopt a policy of permitting a customer to choose to use a maiden name, married name or combined surname. Under this policy, a customer could change the name on his or her accounts at reasonable intervals but at any given time, all accounts must be carried in the same name. You also indicated that a customer would be permitted to maintain an account in a different name (a professional name or stage name, for example) if the customer filed an appropriate form with the bank. You believe that adoption of this policy is necessary to prevent confusion, reduce the risk of fraud and simplify recordkeeping.

The Board's staff is of the opinion that the policy described above is consistent with the Act and Regulation B. Section 202.4(e) was intended to correct a practice about which women had complained: refusing to open an account for a married woman in her own given name or surname. The inability to open an account in one's own name may prevent an individual from developing a credit history in that name, and thus may impede the individual's efforts to obtain credit. The staff feels that ... proposed policy is reasonable and consistent with Regulation B.

Excerpts from FRB Letter of May 10, 1976, No. 72, by Anne J. Geary, Senior Attorney.

NUMBER 15

This letter is in response to your letter *** in which you questioned whether the creditor can legally request and obtain a "consumer report" from a consumer reporting agency or procure an "investigative consumer report" under the Fair Credit Reporting Act where the applicant is relying on alimony, child support or maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested. Discussions with staff of the Federal Trade Commission's Bureau of Consumer Affairs indicate that Section 6704 of the Fair Credit Reporting Act would only allow reports to be furnished in accordance with the written instructions of the consumer to whom the report relates.

Section 202.5(d)(2) of Regulation B, however, requires a creditor to consider alimony, child support or maintenance payments as income to the extent that such payments are likely to be made consistently. It cannot be assumed that payors will in all instances refuse permission to access their credit reports. Even where such permission is refused, other factors which a creditor may consider include whether payments are received pursuant to a written agreement or court decree, the length of time the payments have been received, the regularity of receipt, and the availability of procedures to compel payment. Such other factors

if verified should permit a creditor to consider the reliability of such payments as income even in the absence of credit information via a consumer report on the payor. At least one creditor has indicated informally to the Board's staff that it intends to ask for a copy of the applicant's income tax return in order to verify receipt of alimony, child support or maintenance income.

You also inquired as to what disclosures the creditor may or should make to the payor of alimony, child support or maintenance payments in the event credit is denied because the payor is not creditworthy. The Fair Credit Reporting Act requires a financial institution denying credit because of information in a consumer report to make disclosures to the consumer. It must advise the consumer orally or in writing that information in the report caused or contributed to the denial of credit and of the name and address of the consumer reporting agency issuing the report. Since the applicant who is relying upon alimony, child support or maintenance payments is the consumer in this particular instance, the disclosure requirements of the Fair Credit Reporting Act mentioned above would apply to the applicant, not the payor.

Excerpts from FRB Letter of December 5, 1975, No. 8, by Janet Hart, Deputy Director.

NUMBER 16

I am writing in response to your letter *** requesting an interpretation of Section 202.5(d) of Regulation B (12 CFR 202). The comments that follow are advisory in nature and are those of staff only; they do not represent a formal interpretation by the Board, as the matter has not been submitted to the Board.

Your basic concern appears to be that Section 202.5(d) will have the effect of denying creditors access to information necessary to an evaluation of an applicant's creditworthiness. We are in general agreement with you that neither the Act nor the regulation is intended to bring about this result.

It is the opinion of staff that the wording of that part of Section 202.5(d)(1) which reads, "... need not be revealed if the applicant does not choose to disclose such income in applying for credit," should be interpreted to mean: "... need not be revealed if the applicant does not choose to rely on such income in applying for credit."

Thus, under Section 202.5(d)(1), a creditor may inquire whether income stated on an application is derived from alimony, child support or maintenance payments. However, this right is subject to the condition that the creditor must first disclose to an applicant that in listing income other than earnings, for example, the applicant need not disclose such payments, unless the applicant is relying on them as the basis for the credit requested.

Where an applicant refuses to furnish sufficient or necessary information concerning income listed on an application, and where without verification of that income the applicant does not qualify for credit, a creditor's refusal to grant credit would not be in violation of the Act or regulation. The creditor must, however, make appropriate efforts to obtain the information from the applicant, and cannot assume that any unexplained difference between earnings and total income must necessarily represent alimony, child support or maintenance payments.

Excerpts from FRB Letter of December 15, 1975, No. 14, by Janet Hart, Deputy Director.

NUMBER 17

***Rather than requiring reapplication upon being in receipt of information indicating merely an "unfavorable change" in creditworthiness, we are of the opinion that some evidence should demonstrate a likelihood of inability or unwillingness to repay before such a step is taken. An unfavorable change in creditworthiness would not necessarily indicate inability to repay. Board staff has informally distinguished between a reevaluation of creditworthiness, which may be permissible and could lead to the need for a reapplication if the information developed should indicate inability to repay, and the reapplication itself. Additional information may appropriately be asked in connection with such a reevaluation, even though a reapplication may not be required unless the result of the reevaluation indicates inability to repay.

Excerpts from FRB Letter of January 9, 1976, No. 31, by Janet Hart, Deputy Director.

NUMBER 18

This letter is in response to your inquiries *** and the conversations you have had with *** our staff.

In your *** letter, you inquired as to permissible creditor action where one of the parties to an account notifies the creditor of the change in marital status and simultaneously denies further liability on the account and requests that the account be closed. Enclosed is a memorandum prepared in response to a similar question raised in another inquiry.

You also asked whether creditors who have learned of a change in the marital status of obligors are allowed to seek new information from those obligors and to establish new accounts with new terms commensurate with the parties' new economic position. Question 1.5 of the enclosed memorandum provides a response answer to this question.

A final question in your *** letter concerns whether Section 202.4(d) requires a creditor in the case of an application for a joint account to provide each prospective obligor with his or her own separate copy of the notice set forth in Section 202.4(d)(1). It is the opinion of staff that Section 202.4(d) requires a creditor to furnish only one notice in connection with each application where two or more applicants have applied jointly for a single extension of credit. In determining which customer shall receive disclosures, a creditor may not select a customer who is secondarily liable such as an endorser, co-maker, guarantor, or a similar party. This does not, of course, prohibit the creditor from also furnishing disclosures to such persons who are secondarily liable.

MEMORANDUM

Your first inquiry raises several questions regarding the action a creditor may take upon a change in an applicant's name or marital status pursuant to Section 202.5(i). Each of the questions will be answered in the order presented in your letter.

1.1 QUESTION: What action may a creditor take on an account that was granted to a married couple on the strength of their aggregated incomes when the couple becomes separated and one spouse announces that he or she will no longer be responsible for trhe charges made on the card?

RESPONSE: Where one party to a joint obligation disclaims further liability for the obligation the creditor may consider the account terminated and may offer the parties an opportunity to reapply individually. The fact that one of the joint obligors disclaimed liability because of a change in marital status does not preclude the creditor from taking such action because it would be based on the loss of one of the joint obligors rather than the change in marital status.

1.2 QUESTION: Assuming a variation of the above situation where there has been a divorce and each spouse wants to retain a separate account, what may the creditor do?

RESPONSE: Again, where the creditor was relying on the joint income as a basis for granting credit, the refusal of either obligor to be responsible for the entire obligation would justify the creditor's terminating the account. If the parties desire a separate account they could be invited to reapply and be evaluated on their individual merits.

1.3 QUESTION: Where both spouses are jointly liable for an account which was granted on the basis of the income earned by only one spouse and, after divorce, both spouses request that the account remain open with only the non wage-earning spouse as the sole obligor, must the creditor continue the account with the non wage-earning spouse as the sole obligor?

RESPONSE: No. Section 202.5(i)(2) would apply and permit the creditor to require a reapplication since the applicant would be relying on income earned solely by his or her spouse.

1.4 QUESTION: Assuming the same facts in number three above except that the applicants request the creditor to split the account and establish two individual accounts for each spouse, may the creditor require a new application under Section 202.5(i)(2)?

RESPONSE: In this situation both parties have, in effect, asked that the existing credit agreement be terminated and that two new agreements be established in its place. The creditor is under no obligation to change a joint obligation into two individual ones without being satisfied that the individual applicants meet its standards of creditworthiness. A creditor's requirement that both applicants file new applications is permissible because it would be done not because of a change of marital status but rather for the purpose of setting up a new account at the request of the applicant.

1.5 QUESTION: If a cardholder's change of marital status is accompanied by a loss of one cardholder's obligation on the account, may the card issuer consider income figures in the original application as evidence of the remaining cardholder's ability or inability to pay? May the issuer ask for updated information if the old figures suggest inability to pay or if they suggest adequate ability to pay?

RESPONSE: The basic rule of Section 202.5(i) is that a creditor may not, on the basis of a change of name or marital status, require a reapplication, i.e., a new request for credit, in the absence of evidence of inability or unwillingness to repay. If a creditor has information in its files indicating that the cardholder is unable to repay the creditor may require a reapplication or take either of the other actions permitted under subparts (ii) and (iii) of that Section. If the information in the creditor's files is not current, the creditor may request that the cardholder furnish updated information whether or not the existing information suggests an inability to repay. In other words, a creditor's request for current information about a cardholder is not necessarily tantamount to requiring a reapplication and may be done upon learning of a change of name or marital status.

Excerpts from FRB Letter and Memorandum of January 12, 1976, Nos. 36 and 36-A, by Janet Hart, Deputy Director.

NUMBER 19

Thank you for your letter *** in which you requested staff interpretation of Section 202.5(b) of Regulation B as it affects a creditor's right to request information from an applicant concerning property held jointly with a spouse with the right of survivorship but which property is not being offered as security.

In an unsecured credit transaction when assets are listed to establish creditworthiness, a lender may make inquiry concerning other possible ownership interests in these assets. Should there be property which is jointly held and would be relied upon by the creditor as a basis for creditworthiness, it would be permissible to take such reasonable steps to facilitate access to the assets if the obligation were not satisfied. We would characterize as reasonable, steps which would remove potential pediments to the satisfaction of a judgment in favor of the creditor on the debt incurred by the unsecured loan that would result from the joint ownershp. This may include a waiver of rights on the part of the nonapplicant, joint owner but should not go so far as to require joint owners to be liable on the note.

Excerpts from FRB Letter of January 15, 1976, No. 37, by Janet Hart, Deputy Director.

NUMBER 20

I am writing in response to your letter *** in which you ask whether a creditor may assign points in a credit scoring system to "housewife" as an occupation.

It is the view of staff that such credit scoring is precluded by Section 202.5(f) of Regulation B and by Section 705(a) of the Act itself, which prohibits the taking of sex or marital status into account in the evaluation of applications. Although you note that widows and divorced women, in addition to married women, would likely indicate such an occupation, the designation itself can apply only to women and only to those who are presently married or who were married at one time.

Excerpts from FRB Letter of January 20, 1976, No. 39, by Janet Hart, Deputy Director.

NUMBER 21

I am writing in response to your letter *** in which you seek clarification concerning the permissibility of inquiries related to childbearing in the case of "obviously pregnant" credit applicants.

Your letter quotes a question-and-answer which appeared in a publication recently with regard to regulation B, in which the writer indicates that, since creditors are legitimately interested in an applicant's ability to repay if credit is extended,

> ... It seems that the creditor could ask [an obviously pregnant female who requests credit on the strength of her present job] whether she will have to give up the job or whether she is eligible for maternity leave. In the latter case, the creditor could probably also ask whether she intends to resume work after the birth of her child.

The underlying assumption made by the writer is that childbearing is associated with a discontinuity in ability to repay. Such an assumption is prohibited in an evaluation of creditworthiness by Section 202.5(h) which in addition to barring inquiries into birth control practices and childbearing intentions also prohibits consideration by a creditor of "assumptions relating to the likelihood of any group of persons bearing or rearing children, or for that reason receiving diminished or interrupted income in the future." It is staff's view that a creditor, even when faced with an obviously pregnant female applicant, is limited to asking neutral questions concerning continued ability to repay, and is precluded from making inquiries related to her pregnant condition. Such a question could be phrased in terms of, "What is your anticipated income over the term of this loan?" However, the creditor would have to ask the question of all applicants, male and female; otherwise it could be asserted that, although the question is basically neutral, the creditor is discriminating in limiting the inquiry to certain individuals.

Excerpts from FRB Letter of January 28, 1976, No. 40, by Janet Hart, Deputy Director.

NUMBER 22

I am writing in response to your inquiry *** in which you expressed concern as to whether a creditor would be in violation of Section 202.5(b) of Regulation B by requesting the most recent tax return of a self-employed person as a means of verifying income, thereby receiving marital status information if the return were joint with a spouse. You specifically ask whether it is permissible under Regulation B to continue the practice of requesting such information.

It is the opinion of staff that a creditor could continue to request the most recent tax return of a self-employed person as a means of verifying income even though in some instances the creditor would inadvertently receive information as to marital status which the creditor had not specifically requested. Section 202.5(k) permits a creditor to acquire and retain such information where it was obtained from the applicant without a specific request of the creditor. However, the creditor is prohibited from utilizing the information about the spouse in its credit evaluation.

You also inquiried as to whether Section 202.5(k) requires a creditor to eliminate or obliterate otherwise prohibited information as to marital status in some fashion upon receipt of a joint return. It is the opinion of staff that this section does not impose such an affirmative requirement so long as the information is not used in evaluation applications or otherwise applied in respect of any aspect of the credit transaction.

Finally, you request that staff render comments on the sample application forms which you have developed. As you know, the Board does not have the staff necessary to pass on whether individual forms are in compliance with the regulation. We are, however, enclosing those public information letters which relate to this matter.

Excerpts from FRB Letter of February 9, 1976, No. 46, by Janet Hart, Deputy Director.

NUMBER 23

This will respond to your letter *** in which you pose three questions regarding Regulation B.

You first inquire whether, if a debt instrument will contain "a warrant of attorney authorizing the confession of judgment," the transaction will be "secured" for purposes of Regulation B. Our staff feels that the definition of "security interest" provided in Section 226.202 of the Regulation Z Interpretations is applicable here. We have enclosed a copy of this section for your reference. The inclusion in a debt instrument of a confession of judgment as that term is described in Interpretation 226.202 of Regulation Z accordingly renders a credit transaction based upon that instrument secured for purposes of Regulation B. Section 202.7(c) of Regulation B regarding spousal signatures in secured transactions would, therefore, also be applicable when a confession of judgment is contained in a note.

Your second question concerned the applicability of Section 202.5(b)(1)(iii) of Regulation B to a situation where an applicant is relying upon property held in tenancy by the entirety to repay a loan. For secured transactions in States where estates held in tenancy by the entirety cannot be encumbered or conveyed by either spouse independently, staff believes that a policy on the part of creditors to make inquiries into an applicant's marital status or require spousal signatures when based upon a reasonable belief that such inquiries were necessary to determine a creditor's rights and remedies under state law upon default or that such signatures were necessary to create a valid lien pass clear title or waive inchoate rights to property would not be violative of Regulation B. Before including tenancy by the entirety within the term "community property," however, we believe further study would be required regarding the potential consequences upon the entire spectrum of credit transactions following such a definition.

You next make inquiry concerning the effect of Regulation B upon an unsecured transaction in a State where tenancy by the entirety limits a spouse's right to convey. Although Section 202.5(b) describing the permissible scope of marital status inquiries for lenders extending unsecured credit is rather restrictive, we believe a full inquiry into other ownership interests could be justified where an asset held in tenancy by the entirety is relied upon to establish creditworthiness. It would appear such inquiries could be made if for the purposes set forth in Section 705(b) of the Equal Credit Opportunity Act, i.e., to consider the possible effect of State property laws on a given credit transaction.

Excerpts from FRB Letter of February 27, 1976, No. 57, by Janet Hart, Deputy Director.

NUMBER 24

This is in response to your letter *** in which you request staff opinion as to the applicability of Section 202.5(i) of Regulation B to five hypothetical situations.

The first question you raise concerns the right of a creditor to terminate a married couple's joint, open end account upon receiving a notice from one spouse that, due to a change in marital status, he or she will not be responsible for future and/or past extensions of credit to the other spouse. In this example the creditor would be revoking the credit privileges of *both* spouses. This problem was given thorough treatment in a previous staff interpretation letter which is enclosed.

We would like to discuss questions two and three together because they both relate to the revocation of one spouse's credit privileges under the circumstances described in your first question. As the enclosed staff letter states, a creditor may terminate a joint account if one obligor disclaims responsibility for the account. Thereafter, the creditor is not obligated to continue extending credit to either spouse. You ask whether a creditor may adopt a policy of terminating the credit privileges of the non-communicating spouse while continuing the credit of the communicating spouse. On its face, such a policy appears unobjectionable under Regulation B. However, we assume that the decision to terminate a per-

son's credit would not be based solely on whether that person was the communicating or the non-communicating spouse but whether that person satisfied the creditor's standards of creditworthiness.

A practice of continuing credit to husbands without reapplication while terminating the credit of their wives may run afoul of the Act's prohibition of discrimination based on sex. The staff is of the opinion that when a creditor terminates a joint account due to a disclaimer of responsibility of one spouse, it would be appropriate for the creditor to ask both spouses to reapply individually for credit. Although this practice may result in credit being extended to men more frequently than women, the practice offers men and women equal opportunity to obtain credit and assures that credit will be granted on the basis of the individual's creditworthiness.

In response to your fourth question, whenever the creditor's records reveal that an extension of credit was based on one spouse's income only and a change in marital status occurs, under Section 202.5(i)(2), a creditor may require a reapplication from both spouses or from one spouse. The creditor is not required to continue extending credit to a person who does not meet the creditor's standards of creditworthiness.

Your fifth question is whether, in a situation covered by Section 202.5(i)(2), a creditor may require that an application be returned within a designated period of time. The staff is of the opinion that a creditor may set a deadline for returning an application without conflict with Regulation B.

Excerpts from FRB Letter of March 19, 1976, No. 63, by Anne J. Geary, Senior Attorney.

NUMBER 25

In your letter *** you raised several questions relating to the Board's Regulation B, Equal Credit Opportunity.

You explain that *** ("Bank") uses credit scoring systems to evaluate consumer loan applications. The systems are designed to avoid any discrimination based on sex, race, color, religion, national origin, age or marital status. A credit decision is based upon the combination of all factors in the Bank's system; no single variable can determine the credit decision. In order to satisfy the requirement of section 202.5(m)(2), Bank proposes to use a letter which explains the credit scoring concept in general terms rather than using a checklist similar to the one set forth in section 202.5(m)(3). Bank wishes to use a general letter in order to protect the integrity of its credit scoring systems.

The Board's staff is sympathetic to Bank's interest in keeping its credit scoring systems confidential; however, in our opinion, the Bank's proposed general letter does not satisfy the requirement of the regulation. The purpose behind section 202.5(m)(2) of Regulation B is to inform the applicant of the reason why he has been turned down for credit. Explaining the reasons for denial may enable an applicant to correct a mistake that may have led to the rejection of his application or to change factors within his control. Bank's proposed letter assures the applicant that race, color, etc. has not been used against him in the credit decision but does not mention the factors that contributed to or resulted in the rejection of his application.

As you are aware, the 1976 amendments to the Equal Credit Opportunity Act add to the Act a statutory requirement to provide each applicant against whom "adverse action" is taken with a statement of reasons for such action. Section 701(d)(3) of the amended Act provides:

> (3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action.

This provision does not become effective until March 1977, but it indicates that Congress intended creditors to provide specific reasons for the rejection of an application. A general letter such as the one the Bank proposes to use may not satisfy the requirement of the statute.

Your second question relates to section 202.4(c) of Regulation B. You explain that the Washington State Human Rights Commission requires creditors to include on their applications a parenthetical explanation that "unmarried" includes single, divorced or widowed. You ask whether the use of this explanatory material is permissible in view of the requirement in section 202.4(c)(2) that only the terms "married," "unmarried" or "separated" but used to describe an applicant's marital status. The Board's staff is of the opinion that compliance with the Washington State requirement does not involve a violation of Regulation B.

Excerpts from FRB Letter of April 26, 1976, No. 70, by Nathaniel E. Butler, Chief, ECOA Section.

NUMBER 26

This is in response to your letter *** regarding Regulation B, Equal Credit Opportunity.

Your question involves the issue of whether a creditor may ask an applicant to disclose other names which the applicant has used in applying for credit. While such an inquiry arguably could be interpreted as an indirect inquiry into marital status, to prohibit this inquiry could deny creditors access to information necessary to evaluate an applicant's creditworthiness. In the staff's view, neither the Act nor the regulation is intended to have this result. Therefore, the staff believes that such an inquiry is permissible.

Excerpts from FRB Letter of April 27, 1976, No. 71, by Nathaniel E. Butler, Chief, ECOA Section.

NUMBER 27

In your letter of June 3, 1976, you ask whether the Equal Credit Opportunity Act or Regulation B prohibit your client from asking applicants for credit the age of their dependents. You note that the permissibility of this question and related questions was discussed in several previous staff letters, and you ask the staff to clarify the positions expressed in those letters.

As you know, the purpose of the Equal Credit Opportunity Act is to make credit equally available to all creditworthy persons without regard to sex or marital status. In order to achieve this purpose, the Act and Regulation B impose restrictions on what a creditor may ask in connection with an application. The basis of this approach is the belief that restricting creditors' access to certain information will reduce discrimination and forbidding the asking of some questions will break down traditional discriminatory practices and assumptions. Thus, for example, the Act limits inquiries about marital status and the regulation porhibits inquiries about child bearing intentions or capabilities. One could argue that the list of prohibited questions should be expanded to include all questions that directly or indirectly reveal an applicant's marital status. For example, if an applicant responds "unmarried" to a question about marital status and in response to a question about age of dependents reveals that he or she has a five year old dependent, the creditor may conclude that the applicant is divorced or widowed. The creditor may then rely upon discriminatory assumptions about the creditworthiness of divorced and widowed persons.

On the other hand, many questions that creditors are permitted to ask and that elicit information important to a credit decision may tend to reveal marital status. For example, an affirmative response to a question about home ownership may suggest that the applicant is married.

The Board's staff feels that forbidding certain questions because they may reveal marital status or otherwise lead to discrimination would be contrary to the intent of the law and may lead to absurd results. We are of the opinion that the forbidden questions are those set forth in the Act and Regulation B and no others. Thus, we believe that a creditor may ask about "dependents" or "children" and that a creditor may ask about the age of dependents or children.

Creditors must keep in mind, however, that misuse of information obtained in response to questions about dependents will expose them to liability. Using your example, if a creditor discounted a married woman's income on the assumption that the existence of minor dependents decreased the likelihood of her continuing to work, the creditor would be violating the Act and Regulation B.

To the extent staff letters 47, 48 and 49 are inconsistent with this letter, they are revoked.

This letter is an unofficial staff interpretation of Regulation B. The opinions expressed herein are not binding on the Board. We hope you will find our comments helpful.

Excerpts from FRB Letter of September 2, 1976, No. 75, by Nathaniel E. Butler, Chief, ECOA Section.

NUMBER 28

I am writing in response to your letter *** in which you raise a number of questions regarding Regulation B. An earlier letter responded to item one; and items two, three and four are discussed below. Issues raised in item five are under continuing staff review at this time.

With regard to "family accounts" (item #two), you inquire whether after the effective date of Section 202.6(a) a creditor must offer accounts for which only one spouse is liable but which both spouses are permitted to use. You interpret the phrase, "if such accounts are offered by the creditor," in Section 202.6(a)(1)(i) to mean that a creditor need not offer such accounts. You also ask whether a creditor may require all persons who will be permitted to use an account (as indicated by the issuance of cards to them) to assume contractual liability for all charges to the account.

It is the view of staff that Regulation B would not prohibit a creditor from requiring all users to become contractually liable upon an account. These contract terms should, of course, be clearly stated for the benefit of the applicant and any such users. A creditor would not be required to offer accounts for which only one spouse is liable but which both spouses are permitted to use.

You next inquire (item #three) whether you are required to report the credit history of a loan in only one spouse's name even though both spouses are liable on the debt when an inquiry concerning the credit history is made in the name of that spouse only by a consumer reporting agency. The answer is yes if the information about the consumer is being provided outside of the regular manner in which the consumer reporting agency usually receives information about the consumer from your financial institution. It is the view of staff that where a

consumer reporting agency initiates an inquiry about a particular individual's account, it assumes the position of a creditor as to information that it may request and/or receive. Section 202.6(a)(2)(ii) imposes the requirement that you report information in such circumstances only in the name of the person about whom the inquiry was made, indicating where appropriate that the account is held jointly with another person.

In item #four you inquire whether a creditor in a noncommunity-property State may rely on Section 202.7(b) in requesting the signature of an applicant's spouse where the applicant resides in a community property State. The answer to your question is yes. The reason for the community property exception to the restriction on marital status inquiry is that community property statutes affect a creditor's rights to the assets that a married applicant may rely on to qualify for credit. Since it is the State of the applicant's domicile or, in the case of real property, the State in which the property is located which would determine whether the applicant's assets will be held either as community property or individually, the creditor should look to the law of those States for purposes of applying this section of the regulation. In other words, a creditor would look to the laws of the State in which the applicant is either domiciled or owns real property for purposes of applying Sections 202.7(b) and 202.4(c)(1). A creditor may assume, unless instructed otherwise by the applicant, that the applicant is domiciled in the State in which the applicant resides.

Excerpts from FRB Letter of January 9, 1976, No. 33, by Janet Hart, Deputy Director.

NUMBER 29

You also inquired as to whether a creditor is required under Section 202.6 to disclose the names of both spouses on periodic statements. The answer is no. Section 202.6 was promulgated to insure that credit histories be accessible in the name of each spouse and to eliminate a frequent complaint of women concerning the inability to obtain credit because the credit histories were reported only in the husband's name. Therefore, it is the view of staff that this section does not impose a requirement upon creditors to disclose or send periodic statements in the names of both spouses.

Finally, you inquired as to whether Section 202.4(c)(4) of Regulation B prohibits the use of courtesy titles on various kinds of computer generated letters your clients send to customers, even for persons who have declined to designate an optional courtesy title on their application form. It is the view of staff that Regulation B seeks to implement a statutory goal of equal access to credit and that the purpose of Section 202.4(c)(4) is to allow an applicant who so chooses during the application process to avoid revealing his or her sex. Therefore, we feel that the use of courtesy titles on computer generated letters following the completion of the application process and the extension of credit would not contravene Section 202.4(c)(4).

Excerpts from FRB Letter of January 16, 1976, No. 38, by Janet Hart, Deputy Director.

NUMBER 30

I am writing to respond to your letter in which you ask whether a creditor may obtain the signatures of both husband and wife under Section 202.7(c) where the facts are unclear as to the ownership of the collateral. As you have correctly surmised, the language in Section 202.7(c)—"or are reasonably believed by the creditor to be so necessary"—refers to situations in which the creditor has reasonable doubt as to the meaning of the applicable State law. Since, in addition, some cases of such "reasonable belief" will arise because a creditor cannot clarify the applicability of such law to the facts in question, it is the view of staff that Section 202.7(c) will also permit the creditor to obtain the signature of the applicant's spouse where it is unclear whether both spouses may have an interest in the collateral.

Excerpts from FRB Letter of November 25, 1975, No. 5, Janet Hart, Deputy Director.

NUMBER 31

This is in response to your letter ***. Your client, a bank, maintains a policy of requiring a spouse's signature on an unsecured debt instrument whenever a married person applies for credit in excess of a certain amount. You ask whether this policy would be consistent with Section 202.7(a) of the regulation.

Section 202.7(a) prohibits a creditor from requiring a spouse's or other person's signature on a credit instrument if such a requirement is imposed only on married applicants. Thus, a creditor could not, as a general practice, require a spouse's signature whenever a married applicant applies for credit in excess of a certain amount.

However, Section 202.7(a) does permit a creditor to require a spouse's or other person's signature under certain conditions. For example, if an applicant for an unsecured loan would not qualify for the loan without listing assets of a specified value, it may be permissible for a creditor to adopt a policy of requiring the signature of any person, spouse or otherwise, who may hold title to any of those assets jointly with the applicant where such joint ownership would prevent the creditor from realizing on the assets in the event of default. Since the creditor would be relying on such assets as a basis for creditworthiness, it would be permitted to take such reasonable steps to facilitate access to the assets if the obligation were not satisfied.

There are a few caveats a creditor should keep in mind when implementing such a policy. First, if under State law the creditor would have access to the applicant's undivided one-half interest in an asset without the joint owner's signature, and if such a share of the assets is sufficient to enable the applicant to qualify for credit, the joint owner's signature could not be required. Second, if an applicant would qualify for credit without the listing of assets, a creditor could not request a listing of assets simply for the purpose of securing a spouse's signature.

There is one final point to bear in mind. There are 12 States with statutes which provide that all real property acquired by married persons during coverture is owned as tenants by the entirety and that neither spouse has the power to commit any interest in the property without the signature of the other spouse. In these States, where a married applicant applies for an unsecured loan and is requested to list real property in order to qualify for the loan, it would be permissible for a creditor to require the applicant's spouse to sign the obligation even though a similar requirement would not be imposed on a similarly qualified unmarried applicant. Such a policy, although applied only to married applicants, is permitted under Regulation B because the States' property laws treat married applicants differently from unmarried applicants in a way which affects their creditworthiness and, pursuant to Section 202.5(l), a creditor may take such laws into account in granting credit.

Excerpts from FRB Letter of November 26, 1975, No. 7 by Lewis H. Goldfarb, Director/Counsel, ECOA Task Force.

NUMBER 32

We received your letter *** in which you inquired as to whether a request for a spouse's signature on an unsecured farm operating loan for crop planting purposes is in violation of Regulation B. Section 202.7(a) of Regulation B prohibits a creditor from requiring a spouse's or other person's signature on a credit instrument if such a requirement is imposed only on married applicants who apply for credit in excess of a certain amount.

A creditor is permitted, however, under Section 202.7(a) to require a spouse's or other person's signature under certain conditions. For example, if an applicant for an unsecured loan would not qualify for the loan without listing assets of a specified value, it may be permissible for a creditor to adopt a policy of requiring a waiver or release from any person, spouse or otherwise, who may hold title to any of those assets jointly with the applicant where such joint ownership would prevent the creditor from realizing on the assets in the event of default. This would include procedures requiring a wife to waive her rights as a beneficiary on a life insurance policy. Since the creditor would be relying on such assets as a basis of creditworthiness, it would be permitted to take such reasonable steps to facilitate access to the assets if the obligation were not satisfied.

Excerpts from FRB Letter of January 6, 1976, No. 28, by Janet Hart, Deputy Director.

NUMBER 33

I am writing in response to the five questions regarding Regulation B that you posed in your letter ***.

1. *Question:* Can *** rely on the transition periods enumerated in Regulation B and its press release of October 16, 1975?

Response: The dates published in Regulation B are correct. However, on January 2, 1976, the Board of Governors issued proposed amendments which, if adopted, will change the effective date of Section 202.5(d)(1) from October 28, 1975, to June 30, 1976, which is the effective date for Section 202.4(c)(3). The previous discrepancy was inadvertent.

2. *Question:* Does the statement in Section 202.7(a) that any signature requirement be imposed without regard to sex or marital status on all similarly qualified applicants mean that a creditor must establish one of two policies—requiring either (1) that a spouse must sign every credit instrument (presumably, both collateral and note) or (2) that no spouse may sign except when the conditions listed in 202.7(c) are present.

Response: Regulation B does not require that a creditor choose between the two policies you have described. The language of Section 202.7(a) refers to the imposition of such a requirement.

> "... without regard to sex or marital status on all similarly qualified applicants who apply for a similar type or amount of credit."

Where a creditor offers joint credit to two or more persons, married or unmarried, it is customary for all applicants to sign the note. In joint credit accounts the creditor usually acquires the right to collect all or part of the debt from each

of the several debtors. This is one example of what Section 202.7(a) envisions in referring to the "type of credit" in question. The regulation thus appears to permit a creditor to impose different criteria for signatures when more than one applicant would be obligated to repay the debt, so long as the creditor does not discriminate among similarly qualified applicants on the basis of sex or marital status.

Moreover, Section 202.7(a) does not provide that the conditions described in 202.7(c) are the only ones under which a creditor is permitted to seek an additional signature. For your information, we have enclosed a copy of a staff letter recently sent in response to a similar question.

3. *Question:* Are the sections of Regulation B enumerated in 202.10(c) as applicable to business credit to be applied in the same fashion to business granting as they will be to consumer loans?

Response: Creditors will be required to comply with the applicable sections of the regulation whether the credit involved fits under the definition of business credit or consumer credit.

We would also like to bring to attention the fact that a proposed amendment to Regulation B was issued by the Board of Governors on January 2, 1976, which, if ultimately adopted, will alter the applicability of 202.10(c) as follows: Section 202.5(m)(2) and 202.5(m)(3) would be accorded the same scope as 202.9. Thus, they, too, would only apply to transactions involving an application for credit in the amount of $100,000 or less where the applicant requests in writing that the creditor provide such reasons or retain such records. In addition, Sections 202.4(e) and 202.5(g) would not apply to business credit extended in the name of a business firm. Comment upon the proposed amendment will be accepted until February 2, 1976.

4. *Question:* If Section 202.4(c)(1) means that as to unsecured, separate accounts, no inquiry whatsoever as to an applicant's marital status may be made, then if a bank application form includes a question as to marital status—using the three terms permitted by 202.4(c)(2)—will that form be in violation of Section 202.4(c)(1)?

Response: With the exceptions of credit sought in community property States and as required to comply with State finance charge or loan ceiling laws, Section 202.4(c)(1) prohibits any inquiry into an applicant's marital status if the applicant is applying for an unsecured, separate loan.

In order to comply with that section, an application form should be written in such a fashion that an applicant for an unsecured, separate account will not be asked to reveal his or her marital status. There are, of course, a number of ways in which this might be accomplished. A different application form might be used for separate, unsecured credit or a universal application form might be divided into subsections depending on the type of credit sought, with the marital status question placed only where appropriate. Or, in addition, the form itself might instruct an applicant *not* to answer the marital status inquiry if he or she is applying for separate, unsecured credit.

5. *Question:* Does Section 202.6(b)(1)(ii) require that the notice form entitled "Credit History for Married Persons" be sent to persons who applied for credit or only to those persons who hold accounts with the bank?

Response: The method of notification described in Section 202.6(b)(1)(ii) was chosen to reach the greatest number of active accounts, thus a creditor may comply by mailing the notice to all those accounts for which any statement is sent between November 1, 1976, and February 1, 1977. This would not include a mailing either to other account holders for which no statement is mailed during that period or to persons who were never granted accounts in the first place.

Excerpts from FRB Letter of February 5, 1976, No. 44, by Janet Hart, Deputy Director.

NUMBER 34

The questions presented in your letter *** have been given careful consideration by our staff. We hope the following comments will help to clarify the intent and requirements of the Equal Credit Opportunity Act and Regulation B, copies of which are enclosed for your convient reference.

A policy of requiring both husband and wife to sign may be in violation of Regulation B, depending upon what they are required to sign. Section 202.7(c) of the regulation allows a creditor to require the signature of a nonapplicant spouse on a separate credit application when he reasonably believes such a signature is necessary "to create a valid lien, pass clear title, waive inchoate rights to property or assign earnings."

If we are speaking of secured credit, a wife, for example, could be required to waive her inchoate rights of dower in the family dwelling if it were being used to secure a separate loan to her husband. The same reasoning would apply in the area of unsecured credit when an applicant is relying upon certain designated, unpledged assets to establish creditworthiness. A nonapplicant spouse may be required to waive all rights in an asset as to a particular creditor before separate credit is extended to the applicant.

Therefore, if a nonapplicant spouse in a separate credit transaction is required to sign a security instrument or other document designed to waive the rights of the nonapplicant in a collateral or asset for the reasons set forth in Section 202.7(c), it would appear Regulation B would not be violated.

If, however, the applicant spouse is always required to procure the signature of the nonapplicant spouse on a note imposing personal liability upon the nonapplicant, it would seem no real separate credit is being offered, only joint credit. Thus, one of the primary purposes of ECOA is frustrated, i.e., the availability of separate credit to creditworthy, married applicants.

This, in no way, should be construed to mean that married couples may not be offered joint credit. A husband and wife may still rely on "family assets" to obtain credit. A nonworking wife may still rely upon the income of her husband to obtain credit if she so wishes. Reliance upon the income of a spouse would bring a credit transaction within the purview of Section 202.5(b)(1)(iii) of Regulation B allowing a creditor to investigate the working spouse's creditworthiness in such a situation, you could also require the working spouse to assume personal liability on the debt by signing a note. In short, separate credit need only be extended when an applicant (married, unmarried or separated) meets your standards of creditworthiness, individually. If your standards are not met, a co-signer may be required but the choice of the co-signer should be left to the discretion of the applicant.

We would like to insert a caveat here, however, and advise that you may wish to discuss the full extent to which State laws affect what signatures would be needed in a given credit transaction with an attorney licensed to practice in the appropriate jurisdiction.***

Your last question involves the applicability of Regulation B to "dealers who sell their paper to lending institutions." Without knowing specifically what a particular dealer's operating procedure is, it is difficult to ascertain, definitely, whether such a person would come within the purview of Regulation B. However, Section 202.3(e) is interpreted broadly and would probably include most of the individuals you describe as dealers. You may wish to familiarize yourself with the practices of these dealers in order to insure that you are not indirectly participating in discriminatory policies instituted by them.

Excerpts from FRB Letter of February 10, 1976, No. 47, by Janet Hart, Deputy Director.

NUMBER 35

This responds to your letter *** in which you asked several questions as to the interpretation of Section 202.7 of the Board of Governors' Regulation B, Equal Credit Opportunity. A copy of the regulation is enclosed for your convenient reference. I regret the delay, in sending this reply.

Your first question relates to whether a creditor may discount jointly held property in making a determination of creditworthiness for unsecured credit. If you decline to consider jointly owned assets of the "spouse" of an applicant only, the Equal Credit Opportunity Act would be violated; whereas, if a decision were made to discount jointly held assets in all cases, staff believes that you would not necessarily be in violation of the Act.

One caveat is perhaps appropriate: any loan granting criterion which would have a disproportionate impact upon a particular group (e.g., married individuals, females) may be violative of ECOA's general prohibition against discrimination based upon sex or marital status. The "effects test" used on Civil Rights legislation under case law could be applied to ECOA by the courts.

Next, you ask whether you may require the signature on the debt instrument of a nonapplicant spouse having an interest in property held jointly with an applicant spouse seeking unsecured credit which property is needed to make the applicant creditworthy. Since the creditor would be relying on such assets as a basis for creditworthiness, it would be permitted to take reasonable steps to facilitate access to the assets if the obligations were not satisfied. Thus, under these circumstances, you could require the signature of the spouse to a release or waiver of rights in the jointly held property. The statute would not appear, however, to permit requiring the signature of the spouse to the debt instrument itself.

Your third question is whether you may require all parties who will own mortgaged property to sign the note as well as the mortgage. As explained above, the answer is no, where the nonapplicant spouse's creditworthiness is not relied upon, unless under applicable State law, the absence of signature of either husband or wife on a good note would result in failure to pass good consideration. Where State laws are so interpreted a creditor may require both spouses to sign the note and security instrument.

In answer to your fourth inquiry concerning the application of a husband for a home improvement loan when he is the sole source of income but does not hold title to the property, we would generally reiterate our reply to the previous question. The spirit of ECOA appears to require that only the individual whose creditworthiness is relied upon should be required to become liable on the note. However, once again, State law may affect the validity of consideration passed under such an arrangement and, in such cases, creditors are justified in seeking the additional signature on the note in order to protect their security.

Lastly, you ask, in a situation where the applicant wishes to purchase a motor vehicle on a secured basis with title to be registered in the name of applicant's spouse, and where the creditor is relying on the income of the applicant for repayment of the loan, does Section 202.7(a) permit the creditor to require the

signature of a non-applicant title holder to the debt obligation as well as on an instrument creating a security interest in the vehicle? Our opinion, once again, is that liability of the non-applicant spouse on the note could not be a prerequisite to the granting of credit, absent reliance on the income of that spouse for repayment of the loan. The same caveat concerning applicable State law pertinent to the passing of valid consideration would again apply.

Excerpts from FRB Letter of February 17, 1976, No. 50, by Janet Hart, Deputy Director.

NUMBER 36

This will respond to your letter ***. The question you raised concerning the proper interpretation of Section 202.7(a) of the Board of Governors' Regulation B, Equal Credit Opportunity, has given rise to numerous inquiries by the credit granting industry.

Requiring the signature of a *spouse,* whether male or female, in all instances may avoid discrimination on the basis of sex but remains contingent upon the marital status of an applicant. The statute requires that all applicants, married or unmarried, be treated equally. The conclusion would follow that if an unmarried person and a married person bear the same credentials to establish creditworthiness, then both should either always be required to obtain a cosigner or be freed from that burden entirely. In any event, the Equal Credit Opportunity Act would seem to require that the choice of a co-signer on a credit instrument evidencing unsecured credit should be left to the discretion of the applicant.

Even in extending unsecured credit the creditor can ensure access to an asset by requiring a nonapplicant spouse to waive all rights in any assets used by the applicant to establish creditworthiness. Regulation B would not seem to permit, however, requiring personal, financial liability to be assumed by the nonapplicant spouse.

Protection from the effect of transfers of assets to avoid the claims of creditors is provided by statute in most States. New York, for example, in its General Obligation Law, Section 3-309, provides for the nullification of transfers found to be in violation of this Statute. Case law has interpreted these provisions to apply to transfers by husbands and wives between themselves. Federal Bankruptcy Laws may provide supplemental protection against the effects of fraudulent transfers.

Requiring both spouses to assume personal liability for an unsecured loan may provide the creditor with access to an alternate source of collection but frustrates one of the primary purposes of the Equal Credit Opportunity Act, i.e., that separate credit for married applicants be available upon request. We would for this reason, advise against implementation of such a general policy.

Excerpts from FRB Letter of February 20, 1976, No. 52, by Janet Hart, Deputy Director.

NUMBER 37

I am writing in response to your letter *** regarding Regulation B.

You ask whether a lender may require the signatures of both spouses in an unsecured credit transaction when the applicant checks the "yes" block in response to the question, "Will spouse be contractually liable on this contract?"

It is staff's view that, under these circumstances, the applicant is in effect submitting an application for joint credit. Therefore, the lender is entitled to obtain all necessary information concerning the co-applicant spouse under section 202.5(b)(1), and also to obtain the signature of the co-applicant spouse. Section 202.7(a) of Regulation B is not intended to prohibit a creditor from obtaining the signature of an applicant or co-applicant.

Excerpts from FRB Letter of March 19, 1976, No. 62, by Janet Hart, Deputy Director.

NUMBER 38

We are responding to your letter *** in which you ask whether creditors may require the signature of the applicant's spouse on an integrated truth in lending disclosure statement, note and security agreement without violating the provisions of section 202.7 of Regulation B.

It is our opinion that creditors may not as a matter of course require the signature of a non-applicant spouse on a note. There are certain circumstances in which the non-applicant spouse may be required to sign the note as well as other instruments, but such signature may not be required under a blanket rule. For example, the non-applicant spouse may be required to sign if that spouse's creditworthiness is necessary to support the amount and kind of credit sought. If the non-applicant spouse has income which is necessary to repay the debt, that spouse's signature could be required on the note. Of course, this determination would have to be made on a case by case basis.

Another example of a situation in which a non-applicant spouse can be required to sign the note occurs in certain jurisdictions where it is necessary for both spouses to sign not only security instruments, but also the instrument evidencing the indebtedness in order to create a valid and enforcible lien. In those states, the non-applicant spouse can be required to execute the note as well as the security instrument.

Although the non-applicant's signature may not be required on the note, it may be required on other instruments. If the creditor reasonably believes it is necessary to have the non-applicant spouse execute certain documents to create valid liens, pass clear title, waive inchoate rights to property, or assign earnings, the creditor may require the signature of the non-applicant spouse on the documents appropriate to accomplishing these ends. For example, a creditworthy married female seeking individual credit who offers a car which is owned jointly with her husband as security, could be required to sign the integrated truth in lending disclosure statement, security agreement and note. The husband could not be required to sign the integrated instrument, but he could be required to sign a separate security agreement and other documents necessary to create an enforcible lien.

It should be pointed out, however, that a non-applicant spouse may wish to execute the debt instrument even though that spouse's signature could not and would not be required to support the credit being sought. For example, the spouse may want to be contractually liable in order to reap the benefits of a credit history that would reflect the note's having been paid according to its tenor. In situations where the offer to become liable on the debt is truly voluntary, creditors should permit those spouses to sign the note.

Excerpts from FRB Letter of April 20, 1976, No. 67, by Nathaniel E. Butler, Chief, ECOA Section.

NUMBER 39

We understand that most state loan laws provide for graduated steps which impose limitations on interest charges. The rate of interest falls as the amount lent increases. Most loan laws also impose ceilings on the amount which may be lent. You have asked our staff to advise you concerning the effect of the Equal Credit Opportunity Act (ECOA) and Regulation B upon state law provisions designed to prevent evasion of the graduated rate ceiling and the ceiling on the amount which can be lent.

In formulating a response to your questions, we have classified the laws into three categories:

CLASS I. State laws which prohibit a creditor from making two separate extensions of credit to a husband and wife with the result that higher interest rates may be obtained than would otherwise be permitted under State law (New York, for example).[1]

CLASS II. State laws which forbid two extensions of credit when the second is made *for the purpose* of obtaining higher interest rates. Class II laws are to be distinguished from Class I laws in that the purpose of the second extension of credit in Class I states is irrelevant; the second extension must not *result* in higher interest rates. It is permissible to make the second extension of credit in Class II states providing it is made to accommodate the debtor's voluntary request and not for the purpose of obtaining higher interest rates, even though higher rates may result (Wisconsin, for example).[2]

CLASS III. State laws which have a flat prohibition against any person or husband and wife having more than one loan from a creditor (Illinois, for example).[3]

[1]*New York Small Loan Act, Sec. 352.* "... No licensee shall permit any loan to be split up or divided. No licensee shall induce or permit any person, nor any husband and wife jointly or severally, to become obligated, directly or contingently, or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section."

[2]*Wisconsin Discount Loan Law, Sec. 138.09(j).* "No licensee may divide any loan or otherwise encourage any person or any husband and wife to become obligated to the licensee directly, under more than one contract of loan at the same time for the purpose of obtaining a higher rate of finance charge than would otherwise be permitted by this section."

[3]*Illinois Consumer Finance Act, Sec. 13(d).* "No licensee may encourage, compel, or permit any borrower or borrowers to split up or divide any loan or loans. No licensee may encourage, compel, or permit any person, nor any husband and wife, jointly or severally to become obligated, directly or contingently, or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section ..." *Rule 22(c).* "No licensee shall have outstanding at the same time more than one loan transacted according to this Act to any one obligor. A man and wife living together shall be considered as one borrower." *Illinois Consumer Installment Loan Act, Sec. 16a.* "Double indebtedness Restriction—A licensee shall not permit an obligor to be indebted for a loan transacted pursuant to this Act when such obligor is simultaneously indebted to such licensee or an affiliate (including a corporation owned or managed by the licensee) or agent of such licensee for a loan made pursuant to the "Consumer Finance Act." *Rule 22(d).* "No licensee shall have oustanding at the same time more than one loan transacted according to this Act to any one obligor. A man

and wife living together shall be considered as one borrower."

In staff's opinion, the following represents the correct application of Regulation B to the State laws classified above:

CLASS I. Regulation B will preempt laws in this class to the extent that they prohibit each spouse from obtaining credit separately. Two separate extensions of credit (one to a husband and one to a wife) are not to be combined to determine individual loan ceilings or finance charges.

Under these laws, a person may have a joint account with a spouse or other person or a separate account, but not both unless (pursuant to State law) the second extension of credit is made at a lower interest rate. In these states, when an extension of credit is made to a spouse or any other person when this person already has a joint obligation outstanding with the creditor, joint and separate accounts of the applicant must be combined to determine the permissible finance charges and applicable loan ceilings (see section 202.8(b) of Regulation B). Staff feels that there is no affirmative requirement that a creditor make a second loan in these states, providing second loans are not denied on any basis prohibited by ECOA.

CLASS II. States in this classification will be relatively unaffected by ECOA. Two separate extensions of credit (one to a husband and one to a wife) are not to be combined to determine individual loan ceilings or finance charges. Joint and separate loan extensions made to one debtor must be combined to determine loan ceilings but not finance charges. State law does not require creditors to offer lower interest rates which *result* from a second extension of credit. They forbid a second extension of credit made *for the purpose of* obtaining higher rates. There would be no reason to combine joint and separate loans to determine the appropriate finance charges.

CLASS III. In a state such as Illinois, no person (including husband or wife) may have a joint and separate loan from the same creditor. A husband and wife may each have separate loans because of ECOA preemption of state laws to the contrary. The existence of the type of laws in this classification eliminates the necessity of deciding whether joint and separate loans must be combined to determine finance charges or loan ceilings since this is only done when a creditor may extend joint and separate loans to the same person.

***

To illustrate these three classifications, assume the following facts:

A and B are married; the applicable loan ceiling is $300; a finance charge of 30% per annum may be imposed upon the unpaid balance of any loan up to $100, and 24% per annum on the remaining balance to $300.

After each example the following questions will be answered:

(a) can the loan(s) be obtained?

(b) what is the dollar limit on the separate loans?

(c) what rate may be charged?

CLASS I.

(1) A and B have no obligations.
A wishes to borrow $100.
B wishes to borrow $100.

(a) each may get a loan.

(b) each may borrow up to $300.

(c) each may be charged 30%.

(2) A and B have a joint $100 obligation.
A wants to borrow $100.
B wants to borrow $100.

(a) each may get a loan.

(b) each may borrow up to $200, separately.

(c) each may be charged only 24% on the additional $100.

CLASS II.

(1) A and B have no obligations.
A wishes to borrow $100.
B wishes to borrow $100.

(a) each may get a loan.

(b) each may borrow up to $300.

(c) each may be charged 30%.

(2) A & B have a $100 joint obligation.
A wants to borrow $200.
B wants to borrow $200.

(a) each may get a loan (providing the purpose of the second loan is not to obtain higher interest rates).

(b) each may borrow up to $200 separately.

(c) each may be charged 30% on the first $100 and 24% on the additional $100.

CLASS III.

(1) A and B have no ogligations.
A wants to borrow $100.
B wants to borrow $100.

(a) each may get a loan.

(b) each may borrow up to $300.

(c) each may be charged 30%.

(2) A and B have a $100 joint obligation.
A wants to borrow $100.
B wants to borrow $100.

(a) neither may obtain an additional, separate extension of credit until the joint obligation is satisfied.

(b) not applicable.

(c) not applicable.

Excerpts from FRB Letter of April 16, 1976, No. 68, by Nathaniel E. Butler, Chief, ECOA Section.

NUMBER 40

This will respond to your letter *** in which you ask several questions concerning Regulation B (12 CFR 202).

You first describe a situation in which an individual applies for separate, unsecured credit relying upon jointly owned assets. You ask whether requiring the co-owners of the assets to assume liability on a note evidencing such a loan would violate Regulation B.

On its face, such a requirement appears neutral as to marital status, and, therefore, permissible. However, the effect of such a requirement may be to treat married persons differently from unmarried persons. Married applicants for *separate* credit would generally be granted *joint* credit since married persons most frequently own their primary assets jointly with their spouse, while unmarried applicants commonly would apply for and be granted separate credit. If this requirement has the effect of treating married applicants less favorably than unmarried applicants it may result in illegal discrimination under the Equal Credit Opportunity Act and Regulation B.

It could be argued that although requiring all co-owners of collateral to assume personal liability may have a disproportionate, unfavorable effect upon married applicants, the practice is justified by business necessity. It appears, however, that in the situation you describe, the business necessity is that a creditor obtain a release of the property interests of the non-applicant co-owner in the asset(s) upon which the applicant relies to establish creditworthiness. The staff feels that such release should be sought in lieu of requiring the assumption of personal liability by all co-owners of an asset when only one is applying for credit.

Excerpts from FRB Letter of July 30, 1976, No. 74, by Nathaniel E. Butler, Chief ECOA Section.

NUMBER 41

I am writing in response to your letter *** which raised several questions concerning Regulation B (12 CFR 202).

With regard to the Cashliner loan drafts issued by your Credit Union to account holders, it is the view of staff that these drafts represent cash advances and do not constitute credit cards. Such an interpretation is supported by a number of factors including the fact that although each such draft represents a "single credit device" under the credit card definition, each can be used only once and not "from time to time" as provided in Section 202.3(i) of Regulation B. Such an interpretation also conforms with opinions issued by staff concerning the identically worded credit card definition in Section 226.13(a)(6) of Regulation Z.

As to the general applicability of Regulation B to such loan drafts, the Section 202.3(d) definition of "application" specifically provides that

> "... The term does not include the use of an existing credit plan to obtain an amount of credit which does not exceed a previously established credit limit."

Our understanding of your Cashliner loan drafts is that they are valid up to but not to exceed a pre-established loan limit; thus, the above exclusion would apply to them.

It should be noted that an application for such an account, as distinguished from use of loan drafts once the account is established, clearly represents a credit transaction that is subject to the requirements of Regulation B.

Your next question dealt with the applicability of Section 202.8(b) to permissible loan ceilings. Our understanding of the dollar limitations which your Credit Union imposes, as clarifed in a telephone conversation, is that the State ceiling is $3,000 per person, whether married or unmarried, and that your institution permits spouses of Federal employees also to become Credit Union members, thereby increasing the Credit Union's loan ceiling for a married couple to

$6,000. On these facts, Section 202.8(b) does not apply, since the State statute and your application of it are not restrictive and do not distinguish between married and unmarried persons.

On credit scoring, you ask whether the use of a point score is permissible if based on such factors as credit history, longevity on the job, income, outgo, age, whether renting or buying, and whether the spouse is working.

Regulation B prohibits only the working spouse item under Section 202.5(f). (Legislation that would bar discrimination on the basis of age is pending before the Congress.) We also call your attention to Section 202.5(g), which prohibits taking a telephone listing into account in credit scoring; Section 202.4(c), which limits inquiries that a creditor is allowed to make regarding marital status; and Section 202.5(b), which governs creditor requests for information concerning a spouse. In those situations where an applicant elects to rely in part or entirely on a spouse's income in seeking credit, Section 202.5(e) states that a creditor shall not discount such income on the basis of sex or marital status.

The above comments are advisory and are those of staff only. They do not represent a formal interpretation by the Board, as the matter has not been submitted to the Board.

Excerpts from FRB Letter of December 15, 1976, No. 13, by Janet Hart, Deputy Director.

NUMBER 42

It is, of course, a basic principle of statutory construction that any preemption of State law should be construed as narrowly as possible. The requirement of the ECOA that State law is only pre-empted when each party to a marriage *voluntarily* applies for separate credit from the same creditor should also, in our view, be emphasized. Thus, State law is pre-empted only where separate loans are intentionally and willingly applied for, with adequate comprehension on the part of the borrowers of the possible alternatives and of the cost of those alternatives. Florida law would not be pre-empted when there is inducement or coercion to enter into separate loans.

Accordingly, we would suggest that creditors in the State of Florida to whom Chapter 516 is applicable should furnish their customers with a disclosure of Section 705(c) of the ECOA, in addition to the disclosure required under State law, but that such disclosure should make it clear to the borrowers that they have an option whether or not to take separate loans, including the fact that the finance charge may be larger if such option is exercised.

Excerpts from FRB Letter of December 23, 1976, No. 20, by Janet Hart, Deputy Director.

NUMBER 43

It is the view of the Board's staff that State laws as to necessaries when in effect may in certain circumstances be pre-empted by the Equal Credit Opportunity Act (ECOA). North Carolina's Consumer Finance Act Section 53-78, for example, forbids the separate extension of credit to husband and wife. Section 202.8(a) of Regulation B pre-empts this law to the extent that it forbids such separate extension of credit. By its last sentence the ECOA requires each spouse to be solely responsible for a debt contracted under a separate credit agreement and covered by a State statute such as the Consumer Finance Act (CFA). It would appear, therefore, that no liability for a spouse's necessaries purchased with proceeds of such a separate extension of credit would exist under these circumstances. on the other hand, a family expense statute or State commonlaw as to necessaries would be unaffected by ECOA as to loans not covered by the CFA or in a State without such a prohibition of separate credit to husband and wife.

Where unaffected by ECOA, we would concur that a creditor may inquire into a nonapplicant spouse's credit history when such nonapplicant spouse can impose financial liability upon his or her husband or wife through family expense statutes. Where State statutes and case law only hold one spouse accountable for family debts, such inquiry would only be allowed of the spouse to be held financially liable. Thus, assuming North Carolina law is as you state, the net effect in North Carolina would seem to be, as you suggest, that male applicants would have to divulge marital status, but female applicants would not.

In answer to your question regarding the ECOA notice, our staff sees no reason why Section 202.4(d) of Regulation B cannot be interpreted as you suggest, namly that as in the case of Section 226.6(e) of Regulation Z, only one notice per credit application need be provided. Also, as under Regulation Z, however, the ECOA notice could not be provided only to one who was secondarily liable on an account although creditors could elect to provide additional notices to such persons who were secondarily liable.

Excerpts from FRB Letter of January 2, 1976, No. 26, by Janet Hart, Deputy Director.

NUMBER 44

This is in response to your letter *** in which you inquired whether "the requirement of subsection 202.9(a) that a creditor retain as to each applicant 'any application form and all other written or recorded information used in evaluating an application' requires all of the financing institutions to obtain separately from the dealer a copy of the Application Form even though none of the financing institutions had physical possession of the Application Form for evaluation of the buyer's credit application?"

Section 202.3(j) defines a creditor as any person who regularly extends or arranges for the extension, renewal, or continuation of credit and Section 202.3(e) defines "arrange for the extension of credit" as to provide or offer to provide credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit participates in the decision to extend credit to an applicant. Reading these two sections together leads to the conclusion that both the automobile dealer and the financial institution are creditors for purposes of complying with Section 202.9(a).

The effect of the practice you describe as customary in the retail automotive financing industry is to create multiple creditors for the purpose of compliance with Regulation B. Under the circumstances you describe it would appear appropriate for the dealer to retain for a period of 15 months after the date he gives the applicant notice of action on an application, the application form and all other written or recorded information used in evaluating the application as well as any written statement submitted by the applicant alleging discrimination prohibited by the Act or this Part. The financial institution would appear to meet the requirements of Section 202.9(a) by maintaining its worksheets and all other information used in evaluating the application and any written statement submitted by the applicant alleging discrimination prohibited by the Act or Regulation.

The Board will be considering several recommendations from staff for official Board interpretation. However, we cannot at the present time determine whether an interpretation will be issued on the question you raised. We hope we have been of assistance to you and if you have any further questions, please do not hesitate to contact our staff.

The above comments constitute informal staff opinion which is advisory in nature and is in no way binding upon the Board.

Excerpts from FRB Letter of December 15, 1975, No. 12, by Janet Hart, Deputy Director.

NUMBER 45

This letter is in response to your inquiry *** in which you basically raised two questions concerning Section 202.9 of the Equal Credit Opportunity Act regulation and the proposed amendments to this section issued by the Board on January 2, 1976.

Your first question is whether a bank would be in compliance with Section 202.9(a), as proposed for amendment, if they failed to retain the form acceptance/rejection letter in the file of each successful or unsuccessful applicant in a computerized application evaluation system where a notation system is used indicating the type and date of the letter sent. According to your letter, a notation of the number of one of forty different letters stating acceptance, rejection, credit limits, and reasons for denial of credit, adverse change in account terms, or termination of account is placed in the applicant's file via the computer and the banks have not been keeping a copy of the actual acceptance/rejection letters that are sent. However, you state that each bank is able at any time to identify the precise text of each acceptance/rejection letter generated.

It is staff's opinion that such a system would not be in violation of Section 202.9(a) as proposed for amendment so long as the creditor is able to identify the precise text of each letter and access to such information is maintained for the 15 month period required under the section.

Secondly, you inquired whether Section 202.9(b)(1) as proposed for amendment, which would impose the requirement that the creditor retain written or recorded information concerning adverse changes in account terms or termination of accounts, requires banks to keep copies of the computer-generated letter sent to each customer, or the banks would be in compliance if they retained as to each customer merely the number identifying the letter sent and the date thereof.

If the method as described in the response to question one above is utilized in this process, it is staff's opinion that failure to retain a written copy of the letter would not violate Section 202.9(b)(1) as long as the bank retains for a period of 15 months records identifying the number of the letter and the date it was sent to the customer and can similarly recreate the text of the letter if necessary.

Excerpts from FRB Letter of February 20, 1976, No. 53, by Janet Hart, Deputy Director.

NUMBER 46

I am writing in response to your letter *** in which you request certain interpretations relating to Regulation B.

Your first question is, may a bank ask an applicant whether credit has been applied for or granted in a name other than that in which the applicant is presently applying? You note that such an inquiry, although made in order to locate credit information stored in that other name (if any), could be interpreted as an indirect inquiry into marital status. This question is still under study and we will advise you as soon as a position has been developed on the matter.

In your second question, you ask whether a bank which "arranges for the extension of credit" with regard to an automobile loan becomes liable if the dealer fails to comply with Regulation B, as where the dealer orally asks prohibited questions. In view of the various retail auto sales-financing practices that exist, the answer would depend on the nature of the business arrangement between the parties. In the situation you described, the bank's role consists of purchasing the loan note from the dealer after credit has been extended to the customer. Under these facts, the bank would appear to have no liability for the dealer's noncompliance, since the bank was not a party to the original credit transaction and is not a creditor as to the customer. We would point out, however, that a bank can be a creditor even where its participation in a transaction is indirect, inasmuch as Section 202.3(j) provides that the term "creditor" includes "assignees, transferees, or subrogees of an original creditor if they participate in the decision to extend credit ..."

Where a bank participates in the decision to grant or deny credit, the bank and the dealer are multiple creditors as to the customer, and each would be held accountable for its own violations of Regulation B and the Act. To the extent the dealer acts as an agent for the bank (as where the dealer takes an application from the customer and transmits it to the bank, but takes no part in the decision to extend or deny credit), the bank would be potentially liable for the dealer's noncompliance. It is staff's view that in this latter situation the bank would not be expected to assume the role of guarantor, but rather would be expected to take reasonable measures to insure the dealer's compliance with the regulations. Regulation B does not address itself to this issue, but for purposes of analogy we call your attention to Section 202.11(a), which provides that as to a failure to comply with certain sections of the regulation, resulting from mechanical, electronic, or clerical errors made in good faith, "... it shall not be a violation of the section if the creditor shows by a preponderance of the evidence that at the time of the noncompliance the creditor had established and was maintaining suitable procedures to assure compliance with the section."

In your third question you ask whether it would represent discrimination on the basis of marital status to designate and report joint accounts in the names of spouses, but not in the case of nonspouses (for example, where a parent is jointly liable as a co-signer or guarantor). In response thereto, we enclose a copy of a letter that presents staff views relative to joint accounts.

Excerpts from FRB Letter of February 27, 1976, No. 56, by Janet Hart, Deputy Director.

Regulation B

(Effective March 23, 1977)

EQUAL CREDIT OPPORTUNITY ACT

Sec.

AUTHORITY: *Sec. 703 of Equal Credit Opportunity Act, U.S.C., Title 15, sec. 1691 et seq.*

SECTION 202.1—AUTHORITY, SCOPE, ENFORCEMENT, PENALTIES AND LIABILITIES, INTERPRETATIONS

(a) **Authority and scope.** This Part[1] comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. § 1601 et seq.). Except as otherwise provided herein, this Part applies to all persons who are creditors, as defined in section 202.2(1).

(b) **Administrative enforcement.** (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this Part regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, 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), Kfministrator of the National Ccsfit Union Administration, Interstate Commerce Commission, Civil Aeronautics Board, Secretucy of Agriculture, Farm Credit Administration, Securities and Exchange Commission, and Small Business Administration.

(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.

[1]As used herein, the words "this Part" mean Regulation B, 12 CFR 202.

(c) **Penalties and liabilities.** (1) Section 706(a) of the Act provides that any creditor who fails to comply with any requirement imposed under the Act, or pursuant to section 702(g), this Part is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to section 704 of the Act, violations of the Act, or pursuant to section 702(g), this Part constitute violations of other Federal laws that may provide further penalties. Liability for punitive damages is restricted by section 706(b) to non-governmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or one per cent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief. Section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) Section 706(e) relieves a creditor from civil liability resulting from any act done or omitted in good faith in conformity with any rule, regulation, or interpretation by the Board of Governors of the Federal Reserve System, or with any interpretations or approvals issued by a duly authorized official or employee of the Federal Reserve System, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, or rescinded, or otherwise determined to be invalid for any reason.

(3) As provided in section 706(f), a civil action under the Act or this Part may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation or within one year after the commencement of an administrative enforcement proceeding or a civil action brought by the Attorney General.

(4) Sections 706(g) and (h) provide that, if the agencies responsible for administrative enforcement are unable to obtain compliance with the Act or, pursuant to section 702(g), this Part, they may refer the matter to the Attorney General. On such referral, or whenever the Attorney General has reason to believe that one or more creditors are engaged in a pattern or practice in violation of the Act or this Part, the Attorney General may bring a civil action.

(d) **Interpretations.** (1) A request for a formal Board interpretation or an official staff interpretation of this Part must be addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington D.C. 20551. Each request for interpretation must contain a complete statement, signed by the person making the request or a duly authorized agent, of all relevant facts of the transaction or credit arrangement relating to the request. True copies of all pertinent documents must be submitted with the request. The relevance of such documents must, however, be

set forth in the request, and the documents must not merely be incorporated by reference. The request must contain an analysis of the bearing of the facts on the issues and specify the pertinent provisions of the statute and regulation. Within 15 business days of receipt of the request, a substantive response will be sent to the person making the request, or an acknowledgement will be sent which sets a reasonable time within which a substantive response will be given.

(2) Any request for reconsideration of an official staff interpretation of this Part must be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, within 30 days of the publication of such interpretation in the *Federal Register*. Each request for reconsideration must contain a statement setting forth in full the reasons why the person making the request believes reconsideration would be appropriate, and must specify and discuss the applicability of the relevant facts, statute and regulations. Within 15 business days of receipt of such request for reconsideration, a response granting or denying the request will be sent to the person making the request, or an acknowledgement will be sent which sets a reasonable time within which such response will be given.

(3) Pursuant to section 706(e) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this Part. This designation shall not be interpreted to include authority to approve particular creditors' forms in any manner.

(4) The type of interpretation issued will be determined by the Board and the designated officials by the following criteria:

(i) Official Board interpretations will be issued upon those requests which involve potentially controversial issues of general applicability dealing with substantial ambiguities in this Part and which raise significant policy questions.

(ii) Official staff interpretations will be issued upon those requests which, in the opinion of the designated officials, require clarification of technical ambiguities in this Part or which have no significant policy implications.

(iii) Unofficial staff interpretations will be issued where the protection of § 706(e) of the Act is neither requested nor required, or where time strictures require a rapid response.

SECTION 202.2—DEFINITIONS AND RULES OF CONSTRUCTION

For the purposes of this Part, unless the context indicates otherwise, the following definitions and rules of construction shall apply:[2]

(a) **Account** means an extension of credit. When employed in relation to an account, the word **use** refers only to open end credit.

(b) **Act** means the Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act).

[2]Note that some of the definitions in this Part are not identical to those in 12 CFR 226 (Regulation Z).

(c) **Adverse action.** (1) For the purposes of notification of action taken, statement of reasons for denial, and record retention, the term means:

(i) a refusal to grant credit in substantially the amount or on substantially the terms requested by an applicant unless the creditor offers to grant credit other than in substantially the amount and on substantially the terms requested by the applicant and the applicant uses or expressly accepts the credit offered; or

(ii) a termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of a creditor's accounts; or

(iii) a refusal to increase the amount of credit available to an applicant when the applicant requests an increase in accordance with procedures established by the creditor for the type of credit involved.

(2) The term does not include:

(i) a change in the terms of an account expressly agreed to by an applicant; or

(ii) any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account; or

(iii) a refusal to extend credit at a point of sale or loan in connection with the use of an account because the credit requested would exceed a previously established credit limit on the account; or

(iv) a refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) a refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(d) **Age** refers only to natural persons and means the number of fully-elapsed years from the date of an applicant's birth.

(e) **Applicant** means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

(f) **Application** means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested; the term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A **completed application for credit** means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral); provided, however, that the creditor has exercised reasonable diligence in obtaining such information. Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant

of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

(g) **Board** means the Board of Governors of the Federal Reserve System.

(h) **Consumer credit** means credit extended to a natural person in which the money, property, or service that is the subject of the transaction is primarily for personal, family, or household purposes.

(i) **Contractually liable** means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) **Credit** means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) **Credit card** means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, or services on credit.

(l) **Creditor** means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes an assignee, transferee, or subrogee of an original creditor who so participates; but an assignee, transferee, subrogee, or other creditor is not a creditor regarding any violation of the Act or this Part committed by the original or another creditor unless the assignee, transferee, subrogee, or other creditor knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) **Credit transaction** means every aspect of an applicant's dealings with a creditor regarding an application for or an existing extension of credit, including, but not limited to, information requirements, investigation procedures, standards of creditworthiness, terms of credit, furnishing of credit information, revocation, alteration, or termination of credit, and collection procedures.

(n) **Discriminate against an applicant** means to treat an applicant less favorably than other applicants.

(o) **Elderly** means an age of 62 or older.

(p) **Empirically derived credit system.** (1) The term means a credit scoring system that evaluates an applicant's creditworthiness primarily by allocating points (or by using a comparable basis for assigning weights) to key attributes describing the applicant and other aspects of the transaction. In such a system, the points (or weights) assigned to each attribute, and hence the entire score:

(i) is derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants of a creditor who applied for credit within a reasonable preceding period of time; and

(ii) determines, alone or inconjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

(2) **A demonstrably and statistically sound, empirically derived credit system** is a system:

(i) in which the data used to develop the system, if not the complete population consisting of all applicants, are obtained from the applicant file by using appropriate sampling principles;

(ii) which is developed for the purpose of predicting the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system, including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment;

(iii) which, upon validation using appropriate statistical principles, separates creditworthy and non-creditworthy applicants at a statistically significant rate; and

(iv) which is periodically revalidated as to its predictive ability by the use of appropriate statistical principles and is adjusted as necessary to maintain its predictive ability.

(3) A creditor may use a demonstrably and statistically sound, empirically derived credit system obtained from another person or may obtain credit experience from which such a system may be developed. Any such system must satisfy the tests set forth in subsections (1) and (2); provided that, if a creditor is unable during the development process to validate the system based on its own credit experience in accordance with subsection (2)(iii), then the system must be validated when sufficient credit experience becomes available. A system that fails this validity test shall henceforth be deemed not be a demonstrably and statistically sound, empirically derived credit system for that creditor.

(q) **Extend credit** and **extension of credit** mean the granting of credit in any form and include, but are not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity.

(r) **Good faith** means honesty in fact in the conduct or transaction.

(s) **Inadvertent error** means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(t) **Judgmental system of evaluating applicants** means any system for evaluating the creditworthiness of an applicant other than a demonstrably and statistically sound, empirically derived credit system.

(u) **Marital status** means the state of being unmarried, married, or separated, as defined by applicable State law. For the purposes of this Part, the term "unmarried" includes persons who are single, divorced, or widowed.

(v) **Negative factor or value,** in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly applicants and are most favored by a creditor on the basis of age.

(w) **Open end credit** means credit extended pursuant to a plan under which the creditor may permit the applicant 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. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(x) **Person** means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) **Pertinent element of creditworthiness**, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) **Prohibited basis** means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act[3] or any State law upon which an exemption has been granted by the Board.

(aa) **Public assistance program** means any Federal, State, or local governmental assistance program that provides continuing periodic income supplement, whether premised on entitlement or need. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation.

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

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

(dd) Footnotes shall have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

[3]The first clause of the definition is not limited to characteristics of the applicant. Therefore, "prohibited basis" as used in this Part refers not only to the race, color, religion, national origin, sex, marital status, or age of the applicant (or of partners or officers of the applicant), but refers also to the characteristics of individuals with whom the applicant deals. This means, for example, that, under the general rule stated in § 202.4, a creditor may not discriminate against a non-Jewish applicant because of that person's business dealings with Jews, or discriminate against any applicant because of the characteristics of persons to whom the extension of credit relates (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located. A creditor may take into account, however, any applicable law, regulation, or executive order restricting dealings with citizens or governments of other countries or imposing limitations regarding credit extended for their use.

The second clause is limited to the applicant's receipt of public assistance income and to the applicant's good faith exercise of rights under the Consumer Credit Protection Act or applicable State law.

SECTION 202.3—SPECIAL TREATMENT FOR CERTAIN CLASSES OF TRANSACTIONS

(a) **Classes of transactions afforded special treatment.** Pursuant to section 703(a) of the Act, the following classes of transactions are afforded specialized treatment:

(1) Extensions of credit relating to 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, or reviewed or regulated by, an agency of the Federal Government, a State, or a political subdivision thereof;

(2) Extensions of credit subject to regulation under section seven of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934;

(3) Extensions of incidental consumer credit, other than of the types described in subsections (a)(1) and (2):

(i) that are not made pursuant to the terms of a credit card account;

(ii) on which no finance charge as defined in section 226.4 of this Title (Regulation Z, 12 CFR 226.4) is or may be imposed; and

(iii) that are not payable by agreement in more than four installments;

(4) Extensions of credit primarily for business or commercial purposes, including extensions of credit primarily for agricultural purposes, but excluding extensions of credit of the types described in subsection (a)(1) and (2); and

(5) Extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(b) **Public utilities credit**. The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(1):

(1) section 202.5(d)(1) concerning information about marital status;

(2) section 202.10 relating to furnishing of credit information; and

(3) section 202.12(b) relating to record retention.

(c) **Securities credit.** The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(2):

(1) section 202.5(c) concerning information about a spouse or former spouse;

(2) section 202.5(d)(1) concerning information about marital status;

(3) section 202.5(d)(3) concerning information about the sex of an applicant;

(4) section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregating of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(5) section 202.7(c) relating to action concerning open end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

(6) section 202.7(d) relating to signatures of a spouse or other persons;

(7) section 202.10 relating to furnishing of credit information; and

(8) section 202.12(b) relating to record retention.

(d) **Incidental credit.** The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(3):

(1) section 202.5(c) concerning information about a spouse or former spouse;

(2) section 202.5(d)(1) concerning information about marital status;

(3) section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(4) section 202.5(d)(3) concerning information about the sex of an applicant to the extent necessary for medical records or similar purposes;

(5) section 202.7(d) relating to signatures of a spouse or other persons;

(6) section 202.9 relating to notifications;

(7) section 202.10 relating to furnishing of credit information; and

(8) section 202.12(b) relating to record retention.

(e) **Business credit.** The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(4):

(1) section 202.5(d)(1) concerning information about marital status;

(2) section 202.9 relating to notifications, unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action;

(3) section 202.10 relating to furnishing of credit information; and

(4) section 202.12(b) relating to record retention, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

(f) **Governmental credit.** Except for section 202.1 relating to authority, scope, enforcement, penalties and liabilities, and interpretations, section 202.2 relating to definitions and rules of construction, this section, section 202.4 relating to the general rule prohibiting discrimination, section 202.6(a) relating to the use of information, section 202.11 relating to State laws, and 202.12(a) relating to the retention of prohibited information, the provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(5).

SECTION 202.4—GENERAL RULE PROHIBITING DISCRIMINATION

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

SECTION 202.5—RULES CONCERNING APPLICATIONS

(a) **Discouraging applications.** A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) **General rules concerning requests for information.** (1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.[4]

(2) Notwithstanding any other provision of this section, a creditor shall request an applicant's race/national origin, sex, and marital status as required in section 202.13 (information for monitoring purposes). In addition, a creditor may obtain such information as may be required by a regulation, order, or agreement issued by or entered into with a court or an enforcement agency (including the Attorney General or a similar State official) to monitor or enforce compliance with the Act, this Part, or other Federal or State statute or regulation.

(3) The provisions of this section limiting permissible information requests are subject to the provisions of section 202.7(e) regarding insurance and sections 202.8(c) and (d) regarding special purpose credit programs.

(c) **Information about a spouse or former spouse.** (1) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) A creditor may request any information concerning an applicant's spouse (or former spouse under (v) below) that may be requested about the applicant if:

(i) the spouse will be permitted to use the account; or

(ii) the spouse will be contractually liable upon the account; or

(iii) the applicant is relying on the spouse's income as a basis for repayment of the credit requested; or

(iv) the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested are located in such a State; or

(v) the applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which such account is carried. A creditor may also ask the names in which an applicant has previously received credit.

(d) **Information a creditor cannot request.** (1) If an applicant applies for an individual, unsecured account, a creditor shall not request the applicant's marital status, unless the applicant resides in a community property State or property

[4]This subsection is not intended to limit or abrogate any Federal or State law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information. Furthermore, permission to request information should not be confused with how it may be utilized, which is governed by section 202.6 (rules concerning evaluations of applications).

upon which the applicant is relying as a basis for repayment of the credit requested are located in such a State.[5] Where an application is for other than individual, unsecured credit, a creditor may request an applicant's marital status. Only the terms "married," "unmarried," and "separated" shall be used, and a creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

(2) A creditor shall not inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor appropriately discloses to the applicant that such income need not be revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness. Since a general inquiry about income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance payments, a creditor shall provide an appropriate notice to an applicant before inquiring about the source of an applicant's income, unless the terms of the inquiry (such as an inquiry about salary, wages, investment income, or similarly specified income) tend to preclude the unintentional disclosure of alimony, child support, or separate maintenance payments.

(3) A creditor shall not request the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form appropriately discloses that the designation of such a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) A creditor shall not request information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. This does not preclude a creditor from inquiring about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(5) A creditor shall not request the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire, however, as to an applicant's permanent residence and immigration status.

(e) **Application forms.** A creditor need not use written applications. If a creditor chooses to use written forms, it may design its own,[6] use forms prepared by another person, or use the appropriate model application forms contained in Appendix B. If a creditor chooses to use an Appendix B form, it may change the form:

(1) by asking for additional information not prohibited by this section;

(2) by deleting any information request; or

(3) by rearranging the format without modifying the substance of the inquiries; provided that in each of these three instances the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries are included in the appropriate places if the items to which they relate appear on the creditor's form. If a creditor uses an appropriate Appendix B model form or to the extent that it modifies such a form in accordance with the provisions of clauses (2) or (3) of the preceding sentence or the instructions to Appendix B, that creditor shall be deemed to be acting in compliance with the provisions of subsections (c) and (d).

SECTION 202.6—RULES CONCERNING EVALUATION OF APPLICATIONS

(a) **General rule concerning use of information.** Except as otherwise provided in the Act and this Part, a creditor may consider in evaluating an application any information that the creditor obtains, so long as the information is not used to discriminate against an applicant on a prohibited basis.[7]

(b) **Specific rules concerning use of information.** (1) Except as provided in the Act and this Part, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.[8]

(2)(i) Except as permitted in this section, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In a demonstrably and statistically sound, empirically derived credit system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent

[5]This provision does not preclude requesting relevant information that may indirectly disclose marital status, such as asking about liability to pay alimony, child support, or separate maintenance; the source of income to be used as a basis for the repayment of the credit requested, which may disclose that it is a spouse's income; whether any obligation disclosed by the applicant has a co-obligor, which may disclose that the co-obligor is a spouse or former spouse; or the ownership of assets, which may disclose the interest of a spouse, when such assets are relied upon in extending the credit. Such inquiries are allowed by the general rule of subsection (b)(1).

[6]A creditor also may continue to use any application form that complies with the requirements of the October 28, 1975 version of Regulation B until March 23, 1978, whichever occurs first. The provisions of this Part shall not determine and are not evidence of the meaning of the requirements of the previous version of Regulation B.

[7]The legislative history of the Act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of **Griggs v. Duke Power Co.**, 401 U.S. 424 (1971), and **Albemarle Paper Co. v. Moody**, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness. See Senate Report to accompany H.R. 6516, No. 94-589, pp. 4-5; House Report to accompany H.R. 6516, No. 94-210, p.5.

[8]This provision does not prevent a creditor from considering the marital status of an applicant or the source of an applicant's income for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness. Furthermore, a prohibited basis may be considered in accordance with section 202.8 (special purpose credit programs).

element of creditworthiness.[9]

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is to be used to favor the elderly applicant in extending credit.

(3) A creditor shall not use, in evaluating the creditworthiness of an applicant, assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future.

(4) A creditor shall not take into account the existence of a telephone listing in the name of an applicant for consumer credit. A creditor may take into account the existence of a telephone in the residence of such an applicant.

(5) A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of the applicant because of a prohibited basis or because it is derived from part-time employment, or from an annuity, pension, or other retirement benefit; but a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. Where an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, a creditor shall consider such payments as income to the extent that they are likely to be consistently made. Factors that a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; the regularity of receipt; the availability of procedures to compel payments; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Fair Credit Reporting Act or other applicable laws.

(6) To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness, a creditor shall consider (unless the failure to consider results from an inadvertent error):

(i) the credit history, when available, of accounts designated as accounts that the applicant and a spouse are permitted to use for which both are contractually liable;

(ii) on the applicant's request, any information that the applicant may present tending to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) on the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and such additional information as may be necessary to ascertain its rights and remedies regarding repayment.

(c) **State property laws.** A creditor's consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute unlawful discrimination for the purposes of the Act or this Part.

SECTION 202.7—RULES CONCERNING EXTENSION OF CREDIT

(a) **Individual accounts.** A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) **Designation of name.** A creditor shall not prohibit an applicant from opening or maintaining an account in a birth-given first name and a surname that is the applicant's birth-given surname, spouse's surname, or a combined surname.

(c) **Action concerning existing open end accounts.** (1) In the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

(i) require a reapplication; or

(ii) change the terms of the account; or

(iii) terminate the account.

(2) A creditor may require a reapplication regarding an open end account on the basis of a change in an applicant's name or marital status where the credit granted was based on income earned by the applicant's spouse if the applicant's income alone at the time of the original application would not support the amount of credit currently extended.

(d) **Signature of spouse or other person.** (1) Except as provided in this subsection , a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) If an applicant requests unsecured credit and relies in part upon property to establish creditworthiness, a creditor may consider State law; the form of ownership of the property; its susceptibility to attachment, execution, severance, and partition; and other factors that may affect the value to the creditor of the applicant's interest in the property. If necessary to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State

[9]Concerning income derived from a public assistance program, a creditor may consider, for example, the length of time an applicant has been receiving such income; whether an applicant intends to continue to reside in the jurisdiction in relation to residency requirements for benefits; and the status of an applicant's dependents to ascertain whether benefits that the applicant is presently receiving will continue.

Concerning age, a creditor may consider, for example, the occupation and length of time to retirement of an applicant to ascertain whether the applicant's income (including retirement income, as applicable) will support the extension of credit until its maturity; or the adequacy of any security offered if the duration of the credit extension will exceed the life expectancy of the applicant. An elderly applicant might not qualify for a five-per cent down, 30-year mortgage loan because the duration of the loan exceeds the applicant's life expectancy and the cost of realizing on the collateral might exceed the applicant's equity. The same aplicant might qualify with a larger downpayment and a shorter loan maturity. A creditor could also consider an applicant's age, for example, to assess the significance of the applicant's length of employment or residence (a young applicant may have just entered the job market; an elderly applicant may recently have retired and moved from a long-time residence).

law to make the property relied upon available to satisfy the debt in the event of default.

(3) If a married applicant requests unsecured credit and resides in a community property State or if the property upon which the applicant is relying is located in such a State, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the community property available to satisfy the debt in the event of default if:

(i) applicable State law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) the applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property being offered as security available to satisfy the debt in the event of default, for example, any instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested,[10] a creditor may request that the applicant obtain a co-signer, guarantor, or the like. The applicant's spouse may serve as an additional party, but a creditor shall not require that the spouse be the additional party. For the purposes of subsection (d), a creditor shall not impose requirements upon an additional party that the creditor may not impose upon an applicant.

(e) **Insurance.** Differentiation in the availability, rates and terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant shall not constitute a violation of the Act or this Part; but a creditor shall not refuse to extend credit and shall not terminate an account because credit life, health accident, or disability insurance is not available on the basis of the applicant's age. Notwithstanding any other provision of this Part, information about the age, sex, or marital status of an applicant may be requested in an application for insurance.

SECTION 202.8—SPECIAL PURPOSE CREDIT PROGRAMS

(a) **Standards for programs.** Subject to the provisions of subsection (b), the Act and this Part are not violated if a creditor refuses to extend credit to an applicant solely because the applicant does not qualify under the special requirements that define eligibility for the following types of special purpose credit programs:

(1) any credit assistance program expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons; or

(2) any credit assistance program offered by a not-for-profit organization, as defined under section 501 (c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a for-profit organization or in which such an organization participates to meet social needs, provided that:

(i) the program is established and administered pursuant to a written plan that (A) identifies the class or classes of persons that the program is designed to benefit and (B) sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) the program is established and administered to extend credit to a class of persons who, pursuant to the customary standards of creditworthiness used by the organization extending the credit, either probably would not receive such credit or probably would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) **Applicability of other rules.** (1) All the provisions of this Part shall apply to each of the special purpose credit programs described in subsection (a) to the extent that those provisions are not inconsistent with the provisions of this section.

(2) A program described in subsection (a)(2) or (a)(3) shall qualify as a special purpose credit program under subsection (a) only if it was established and is administered so as not to discriminate against an applicant on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), income derived from a public assistance program, or good faith exercise of any right under the Consumer Credit Protection Act or any State law upon which an exemption has been granted therefrom by the Board; except that all program participants may be required to share one or more of those characteristics so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this Part.

(c) **Special rule concerning requests and use of information.** If all participants in any of the three types of special purpose credit programs described in subsection (a) are or will be required to possess one or more common characteristics relating to race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program and if the special purpose credit program otherwise satisfies the requirements of subsection (a), then, notwithstanding the prohibitions of sections 202.5 and 202.6, the creditor may request of an applicant and may consider, in determining eligibility for such program, information regarding the common characteristics required for eligibility. In such circumstances, the solicitation and consideration of that information shall not constitute unlawful discrimination for the purposes of the Act or this Part.

(d) **Special rule in the case of financial need.** If financial need is or will be one of the criteria for the extension of credit

[10] If an applicant requests individual credit relying on the separate income of another person, a creditor may require the signature of the other person to make the income available to pay the debt.

under any of the three types of special purpose credit programs described in subsection (a), then, notwithstanding the prohibitions of sections 202.5 and 202.6, the creditor may request and consider, in determining eligibility for such program, information regarding an applicant's marital status, income from alimony, child support, or separate maintenance, and the spouse's financial resources. In addition, notwithstanding the prohibitions of section 202.7(d), a creditor may require the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if required by Federal or State law. In such circumstances, the solicitation and consideration of that information and the obtaining of a required signature shall not constitute unlawful discrimination for the purposes of the Act or this Part.

SECTION 202.9—NOTIFICATIONS

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

(1) **Notification of action taken.** A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, or adverse action regarding, the application (notification of approval may be express or by implication, where, for example, the applicant receives a credit card, money, property, or services in accordance with the application);

(ii) 30 days after taking adverse action on an uncompleted application;

(iii) 30 days after taking adverse action regarding an existing account; and

(iv) 90 days after the creditor has notified the applicant of an offer to grant credit other than in substantially the amount or on substantially the terms requested by the applicant if the applicant during those 90 days has not expressly accepted or used the credit offered.

(2) **Content of notification.** Any notification given to an applicant against whom adverse action is taken shall be in writing and shall contain: a statement of the action taken; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance concerning the creditor giving the notification; and

(i) a statement of specific reasons for the action taken; or

(ii) a disclosure of the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of such notification, the disclosure to include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the statement of reasons orally, the notification shall also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within 30 days, after a written request for confirmation is received by the creditor.

(3) **Multiple applicants.** If there is more than one applicant, the notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(4) **Multiple creditors.** If a transaction involves more than one creditor and the applicant expressly accepts or uses the credit offered, this section does not require notification of adverse action by any creditor. If a transaction involves more than one creditor and either no credit is offered or the applicant does not expressly accept or use credit offered, then each creditor taking adverse action must comply with this section. The required notification may be provided indirectly through a third party, which may be one of the creditors, provided that the identity of each creditor taking adverse action is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and timely provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

(b) **Form of ECOA notice and statement of specific reasons.**

(1) **ECOA notice.** A creditor satisfies the requirements of subsection (a)(2) regarding a statement of the provisions of section 701(a) of the Act and the name and address of the appropriate Federal enforcement agency if it provides the following notice, or one that is substantially similar:

> The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

The sample notice printed above may be modified immediately following the required references to the Federal Act and enforcement agency to include references to any similar State statute or regulation and to a State enforcement agency.

(2) **Statement of specific reasons.** A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in checklist or letter form or may use all or a portion of the sample form printed below, which, if properly completed, satisfies the requirements of subsection (a)(2)(i). Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

STATEMENT OF CREDIT DENIAL, TERMINATION, OR CHANGE

DATE_____

Applicant's Name: _____
Applicant's Address: _____
_____

Description of Account, Transaction, or Requested Credit:
_____
_____

Description of Adverse Action Taken:
_____
_____

PRINCIPAL REASON(S) FOR ADVERSE ACTION CONCERNING CREDIT:

- ☐ Credit application incomplete
- ☐ Insufficient credit references
- ☐ Unable to verify credit references
- ☐ Temporary or irregular employment
- ☐ Unable to verify employment
- ☐ Length of employment
- ☐ Insufficient income
- ☐ Excessive obligations
- ☐ Unable to verify income
- ☐ Too short a period of residence
- ☐ Temporary residence
- ☐ Unable to verify residence
- ☐ No credit file
- ☐ Insufficient credit file
- ☐ Delinquent credit obligations
- ☐ Garnishment, attachment, foreclosure, repossession, or suit
- ☐ Bankruptcy
- ☐ Inadequate collateral

☐ We do not grant credit to any applicant on the terms and conditions you request.

☐ Other, specify _____
_____

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE

☐ Disclosure inapplicable
☐ Information obtained in a report from a consumer reporting agency

Name:_____
Street Address: _____
_____
Phone: _____

☐ Information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

Creditor's name: _____
Creditor's address: _____
_____
Creditor's telephone number: _____

[Add ECOA Notice]

(3) **Other information.** The notification required by subsection (a)(1) may include other information so long as it does not detract from the required content. This notification also may be combined with any disclosures required under other titles of the Consumer Credit Protection Act or any other law, provided that all requirements for clarity, and placement are satisfied; and it may appear on either or both sides of the paper if there is a clear reference on the front to any information on the back.

(c) **Oral notifications.** The applicable requirements of this section are satisfied by oral notifications (including statements of specific reasons) in the case of any creditor that did not receive more than 150 applications during the calendar year immediately preceding the calendar year in which the notification of adverse action is to be given to a particular applicant.

(d) **Withdrawn applications.** Where an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, then the creditor may treat the application as withdrawn and need not comply with subsection (a)(1)

(e) **Failure of compliance.** A failure to comply with this section shall not constitute a violation when caused by an inadvertent error, provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

(f) **Notification.** A creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

SECTION 202.10—FURNISHING OF CREDIT INFORMATION

(a) **Accounts established on or after June 1, 1977.** (1) For every account established on or after June 1, 1977, a creditor that furnishes credit information shall:

(i) determine whether an account offered by the creditor is one that an applicant's spouse is permitted to use or upon which both spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties; and

(ii) designate any such account to reflect the fact of participation of both spouses.[11]

(2) Except as provided in subsection (3), if a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this Part) to a consumer reporting agency, it shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(3) If a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this Part) in response to an inquiry regarding a particular applicant, it shall furnish the informa-

[11]A creditor need not distinguish between participation as a user or as a contractually liable party.

tion in the name of the spouse about whom such information is requested.[12]

(b) **Accounts established prior to June 1, 1977.** For every account established prior to and in existence on June 1, 1977, a creditor that furnishes credit information shall either:

(1) not later than June 1, 1977:

(i) determine whether the account is one that an applicant's spouse, if any, is permitted to use or upon which both spouses are primarily liable;

(ii) designate any such account to reflect the fact of participation of both spouses;[13] and

(iii) comply with the reporting requirements of subsection (a)(2) and (a)(3); or

(2) mail or deliver to all applicants, or all married applicants, in whose name an account is carried on the creditor's records one copy of the notice set forth below.[14] The notice may be mailed with a billing statement or other mailing. All such notices shall be mailed or delivered by October 1, 1977. As to open end accounts, this requirement may be satisfied by mailing one notice at any time prior to October 2, 1977 regarding each account for which any billing statement is sent between June 1 and October 1, 1977. The notice may be supplemented as necessary to permit identification of the account by the creditor or by a consumer reporting agency. A creditor need only send notices relating to those accounts on which it lacks the information necessary to make the proper designation regarding participation or contractual liability.

[NOTICE]

CREDIT HISTORY FOR MARRIED PERSONS

The Federal Equal Credit Opportunity Act prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided that a person has the capacity to enter into a binding contract); because all or part of a person's income derives from any public assistance program; or because a person in good faith has exercised any right under the Federal Consumer Credit Protection Act.

Regulations under the Act give married persons the right to have credit information included in credit reports in the name of both the wife and the husband if both use or are responsible for the account. This right was created, in part, to insure that credit histories will be available to women who become divorced or widowed.

If your account with us is one that both husband and wife signed for or is an account that is being used by one of you who did not sign, then you are entitled to have us report credit information relating to the account in both your names. If you choose to have credit information concerning your account with us reported in both your names, please fill in and sign the statement below and return it to us.

Federal regulations provide that signing your name below will not change or increase your or your spouse's legal liability on the account. Your signature will only request that credit information be reported in both your names.

If you do not complete and return the form below, we will continue to report your credit history in the same way that we do now.

When you furnish credit information on this account, please report all information concerning it in both our names.

Account number	Print or type name
	Print or type name
	Signature of either spouse

(c) **Requests to change manner in which information is reported.** Within 90 days after receipt of a properly completed request to change the manner in which information is reported to consumer reporting agencies and others regarding an account described in subsection (b), a creditor shall designate the account to reflect the fact of participation of both spouses.[15] When furnishing information concerning any such account, the creditor shall report the designation and furnish any information concerning the account to any recipient other than a consumer reporting agency in the name of the spouse about whom such information is requested and, when reporting to consumer reporting agencies, in a manner that will enable such agencies to provide access to information about the account in the name of each spouse. The signatures of an applicant and the applicant's spouse on a request to change the manner in which information concerning an account is furnished shall not alter the legal liability of either spouse upon the account or require the creditor to change the name in which the account is carried.

(d) **Inadvertent errors.** A failure to comply with this section shall not constitute a violation when caused by an inadvertent error, provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

SECTION 202.11—RELATION TO STATE LAW

(a) **Inconsistent State laws.** Except as otherwise provided in this section, this Part alters, affects, or preempts only those State laws that are inconsistent with this Part and then only to the extent of the inconsistency. A State law is not inconsistent with this Part if it is more protective of an applicant.

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[12] If a creditor learns that new parties have undertaken payment on an account, then the subsequent history of the account shall be furnished in the names of the new parties and need not continue to be furnished in the names of the former parties.

[13] See footnote 11.

[14] A creditor may delete the references to the "use" of an account when providing notices regarding closed end accounts.

[15] See footnote 11.

(b) **Preempted provisions of State law.** (1) State law is deemed to be inconsistent with the requirements of the Act and this Part and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that such law:

(i) requires or permits a practice or act prohibited by the Act or this Part;

(ii) prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit.

(iii) prohibits inquiries or collection of data required to comply with the Act or this Part;

(iv) prohibits asking age for use in a demonstrably and statistically sound, empirically derived credit system, to determine a pertinent element of creditworthiness, or to favor an elderly applicant;

(v) prohibits inquiries necessary to establish or administer a special purpose credit program as defined by section 202.8.

(2) A determination as to whether a State law is inconsistent with the requirements of the Act and this Part will be made only in response to a request for a formal Board interpretation. All requests for such interpretations, in addition to meeting the requirements of section 202.1(d), shall comply with the applicable provisions of subsections (b)(1) and (2) of Supplement I to this Part. A determination shall be based on the factors enumerated in this subsection and, as applicable, subsection (c) of Supplement I. Notice of the interpretation shall be provided as specified in subsection (e)(1) of Supplement I, but the interpretation shall be effective in accordance with section 202.1. The interpretation shall be subject to revocation or modification at any time, as provided in subsection (g)(4) of Supplement I.

(c) **Finance charges and loan ceilings.** If married applicants voluntarily apply for and obtain individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under any Federal or State law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.[16]

(d) **State and Federal laws not affected.** This section does not alter or annul any provision of State property laws, laws relating to the disposition of decedents' estates, or Federal or State banking regulations directed only towards insuring the solvency of financial institutions.

(e) **Exemption for State regulated transactions.** (1) In accordance with the provisions of Supplement I to this Part, any State may apply to the Board for an exemption from the requirements of section 701 and 702 of the Act and the corresponding provisions of this Part for any class of credit transactions within the State. The Board will grant such an exemption only if:

(i) the Board determines that, under the law of that State, that class of credit transactions is subject to requirements substantially similar to those imposed under sections 701 and 702 of the Act and the corresponding provisions of this Part, or that applicants are afforded greater protection than is afforded under sections 701 and 702 of the Act and the corresponding provisions of this Part; and

(ii) there is adequate provision for State enforcement.

(2) In order to assure that the concurrent jurisdiction of Federal and State courts created in section 706(f) of the Act shall continue to have substantive provisions to which such jurisdiction shall apply; to allow Federal enforcement agencies to retain their authority regarding any class of credit transactions exempted pursuant to subsection (e)(1) and Supplement I; and, generally, to aid in implementing the Act:

(i) no such exemption shall be deemed to extend to the civil liability provisions of section 706 or the administrative enforcement provisions of section 704 of the Act; and

(ii) after an exemption has been granted, the requirements of the applicable State law shall constitute the requirements of the Act and this Part, except to the extent such State law imposes requirements not imposed by the Act or this Part.

(3) Exemptions granted by the Board to particular classes of credit transactions within specified States will be set forth in Supplement II to this Part.

SECTION 202.12—RECORD RETENTION

(a) **Retention of prohibited information.** Retention in a creditor's files of any information, the use of which in evaluating applications is prohibited by the Act or this Part, shall not constitute a violation of the Act or this Part where such information was obtained:

(1) from any source prior to March 23, 1977;[17] or

(2) at any time from credit reporting agencies; or

(3) at any time from the applicant or others without the specific request of the creditor; or

(4) at any time as required to monitor compliance with the Act and this Part or other Federal or State statutes or regulations.

(b) **Preservation of records.** (1) For 25 months after the date that a creditor notifies an applicant of action taken on an application, the creditor shall retain as to that application in original form or a copy thereof:[18]

(i) any application form that it receives, any information required to be obtained concerning characteristics of an applicant to monitor compliance with the Act and this Part or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

[16]For example, in a State with a permissible loan ceiling of $1,000, if a married couple were jointly liable for unpaid debt in the amount of $250, each spouse could subsequently become individually liable for $750.

[17]Pursuant to the October 28, 1975 version of Regulation B, the applicable date for sex and marital status information is June 30, 1976.

[18]"A copy thereof" includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any accurate information retrieval system. A creditor who uses a computerized or mechanized system need not keep a written copy of a document if it can regenerate the precise text of the document upon request.

(ii) a copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum with respect thereto made by the creditor):

(A) the notification of action taken; and

(B) the statement of specific reasons for adverse action; and

(iii) any written statement submitted by the applicant alleging a violation of the Act or this Part.

(2) For 25 months after the date that a creditor notifies an applicant of adverse action regarding an account, other than in connection with an application, the creditor shall retain as to that account, in original form or a copy thereof:[19]

(i) any written or recorded information concerning such adverse action; and

(ii) any written statement submitted by the applicant alleging a violation of the Act or this Part

(3) In addition to the requirements of subsection (b)(1) and (2), any creditor that has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this Part by an enforcement agency charged with monitoring that creditor's compliance with the Act and this Part, or that has been served with notice of an action filed pursuant to section 706 of the Act and sections 202.1(b) or (c) of this Part, shall retain the information required in subsections (b)(1) and (2) until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(4) In any transaction involving more than one creditor, any creditor not required to comply with section 202.9 (notifications) shall retain for the time period specified in subsection (b) all written or recorded information in its possession concerning the applicant, including a notation of action taken in connection with any adverse action.

(c) **Failure of compliance.** A failure to comply with this section shall constitute a violation when caused by an inadvertent error.

[19]See footnote 18.

SECTION 202.13—INFORMATION FOR MONITORING PURPOSES

(a) **Scope and information requested.** (1) For the purpose of monitoring compliance with the provisions of the Act and this Part, any creditor that receives an application for consumer credit relating to the purchase of residential real property, where the extension of credit is to be secured by a lien on such property, shall request as part of any written application for such credit the following information regarding the applicant and joint applicant (if any):

(i) race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);

(ii) sex;

(iii) marital status, using the categories married, unmarried, and separated; and

(iv) age.

(2) "Residential real property" means improved real property used or intended to be used for residential purposes, including single family homes, dwelling for from two to four families, and individual units of condominiums and cooperatives.

(b) **Method of obtaining information.** Questions regarding race/national origin, sex, marital status, and age may be listed, at the creditor's option, either on the application form or on a separate form that refers to the application.

(c) **Disclosure to applicant and joint applicant.** The applicant and joint applicant (if any) shall be informed that the information regarding race/national origin, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal and antidiscrimination statutes and that those statutes prohibit creditors from discriminating against applicants on those bases. The applicant and joint applicant shall be asked, but not required, to supply the requested information. If the applicant or joint applicant chooses not to provide the information on any part of it, that fact shall be noted on the form on which the information is obtained.

(d) **Substitute monitoring program.** Any monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in subsections (a), (b), and (c).

APPENDIX A

FEDERAL ENFORCEMENT AGENCIES

The following list indicates which Federal agency enforces Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency.

National Banks
Comptroller of the Currency
Consumer Affairs Division
Washington, D.C. 20219

State Member Banks
Federal Reserve Bank serving the area in which the State member bank is located.

Nonmember Insured Banks
Federal Deposit Insurance Corporation Regional Director for the Region in which the nonmemeber insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)
The FHLBB's Supervisory Agent in the Federal Home Loan Bank District in which the institution is located.

Federal Credit Unions
Regional Office of the National Credit Union Administration serving the area in which the Federal Credit Union is located.

Creditors Subject to Civil Aeronautics Board
Director, Bureau of Enforcement
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428

Creditors Subject to Interstate Commerce Commission
Office of Proceedings
Interstate Commerce Commission
Washington, D.C. 20523

Creditors Subject to Packers and Stockyards Act
Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies
U.S. Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

Brokers and Dealers
Securities and Exchange Commission
Washington, D.C. 20549

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations
Farm Credit Administration
490 L'Enfant Plaza, S.W.
Washington, D.C. 20578

Retail, Department Stores, Consumer Finance Companies, All other Creditors, and All Nonbank Credit Card Issuers
(Lenders operating on a local or regional basis should use the address of the F.T.C. Regional Office in which they operate)
Federal Trade Commission
Equal Credit Opportunity
Washington, D.C. 20580

SUPPLEMENT I

Procedures and criteria under which a State may apply for an exemption pursuant to section 705(g) of the Act and section 202.11(e) of this Part.

(a) **Application.** Any State may apply to the Board pursuant to the provisions of this Supplement and the Board's Rules of Procedure (12 CFR 262) for a determination that, under the laws of that State[1], a class of credit transactions[2] within the State is subject to requirements that are substantially similar to, or provide greater protection for applicants than, those imposed under sections 701 and 702 of the Act[3],and that there is adequate provision for State enforcement of such requirements. The application shall be in writing, addressed to the Board, signed by the Governor, Attorney General, or a State official having primary enforcement or interpretive responsibilities under the State law that is applicable to the class of credit transactions, and shall be supported by the documents specified in paragraph (b).

(b) **Supporting Documents.** The applications shall be accompanied by:

(1) A copy of the full text of the State law that is claimed to contain requirements substantially similar to those imposed under sections 701 and 702 of the Act, or to provide greater protection to applicants than sections 701 and 702 of the Act regarding the class of credit transactions within that State.

(2) A comparison of each provision of sections 701 and 702 of the Act with the corresponding provision of the State law, together with reasons supporting the claim that the corresponding provisions of the State law are substantially similar to, or provide greater protection to applicants than, provisions of sections 701 and 702 of the Act regarding the class of credit transactions and demonstrating that any differences are not inconsistent with the provisions of sections 701 and 702 of the Act and do not result in a diminution in the protection otherwise afforded applicants; and a statement that no other State laws (including administrative or judicial interpretations) are related to, or would have an effect upon, the State law that is being considered the Board in making its determination.

(3) A copy of the full text of the State law that provides for enforcement of the State law referred to in subparagraph (b)(1).

(4) A comparison of the provisions of the State law that provides for enforcement with the provisions of sections 704 and 706 of the Act, together with reasons supporting the claim that such State law provides for:

(i) Administrative enforcement of the State law referred to in subparagraph (b)(1) that is at least equivalent to the enforcement provided under section 704 of the Act;

(ii) Civil liability for a failure to comply with the requirements of the State law that is substantially similar to that provided under section 706 of the Act, including class action liability and the ability of the State Attorney General or other appropriate State official to commence a civil action under circumstances equivalent to those prescribed in section 706 of the Act, except that such State law may provide a greater damage remedy or other, more extensive remedies;

(iii) A statute of limitations that prescribes a period for civil liability actions of substantially similar duration to that provided under section 706(f) of the Act, or a longer period; and

(iv) A scope of discovery relating to a creditor's credit granting standards under appropriate discovery procedures in a court action or agency proceeding that is at least equivalent to that provided under section 706(j) of the Act.

(5) A statement identifying the office designated or to be designated to administer the State law referred to in subparagraph (b)(1), together with complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged or to be engaged in enforcement, and a description of the procedures under which such State law is to be administratively enforced, including, if relevant, administrative enforcement regarding Federally-chartered creditors.[4] The statement should include reasons to support the claim that there is adequate provision for enforcement of such State law.

(c) **Criteria for Determination.** The Board will consider the following criteria, and any other relevant information, in determining whether the law of a State is substantially similar to, or provides greater protection to applicants than, the provisions of sections 701 and 702 of the Act regarding the class of action transactions within that State, and whether there is adequate provision for State enforcement of such law. In making that determination, the Board primarily will consider each provision of the State law in comparison with each corresponding provision in sections 701 and 702 of the Act, and not the State law as a whole in comparison with the Act as a whole.

(1) In order for provisions of State law[5] to be substantially similar to, or provide greater protection to applicants than, the provisions of sections 701 and 702 of the Act, the provisions of State law[3] at least shall provide that:

---

[1]Any reference to State law in this Supplement includes a reference to any regulations that implement State law and formal interpretations thereof by a court of competent jurisdiction or duly authorized agency of that State.

[2]As applicable, references to "class of credit transactions" in this supplement include one or more of such classes of credit transaction.

[3]Any reference in this Supplement to sections 701 and 702 of the Act includes a reference to the corresponding and implementing provisions of this Part, the Board's formal interpretations thereof, and official interpretations or approvals issued by an authorized official or employee of the Federal Reserve System. Additionally, any reference to sections 701 and 702 of the Act includes a reference to sections 705(a), (b), (c), and (d) of the Act and the corresponding provisions of this Part, which, though technically not a part of sections 701 and 702, implement and relate to substantive requirements of sections 701 and 702.

[4]Transactions within a State in which a Federally-chartered institution is a creditor shall not be considered subject to exemption, and such Federally-chartered creditors shall remain subject to the requirements of the Act and administrative enforcement by the appropriate Federal authority under section 704 of the Act, unless it is established to the satisfaction of the Board that appropriate arrangements have been made with such Federal authorities to assure effective enforcement of the requirements of State laws regarding such creditors.

[5]This subsection is not to be construed as indicating that the Board would consider adversely any additional requirements of State law that are not inconsistent with the purpose of the Act or the requirements imposed under sections 701 and 702 of the act.

(i) Definitions and rules of construction, as applicable, import the same meaning and have the same application as those prescribed by sections 701 and 702;

(ii) Creditors provide all of the applicable notifications required by the provisions of section 701 and 702 of the Act with the content and in the terminology, form, and time periods prescribed by this Part pursuant to sections 701 and 702; however, required references to State law may be substituted for the references to Federal law required in this Part. Notification requirements under State law in additional circumstances or with additional detail that does not frustrate any of the purposes of the Act may be determined by the Board to be consistent with sections 701 and 702.

(iii) Creditors take all affirmative actions and abide by obligations substantially similar to those prescribed by sections 701 and 702 of the Act under substantially similar or more stringent conditions and within the same or more stringent time periods as are prescribed in sections 701 and 702 of the Act.

(iv) Creditors abide by the same or more stringent prohibitions as are prescribed by sections 701 and 702 of the Act.

(v) Obligations or responsibilities imposed on applicants are no more costly, lengthy, or burdensome relative to applicants' exercising any of the rights or gaining the benefits of the protections provided in the State law than corresponding obligations or responsibilities imposed on applicants in sections 701 and 702 of the Act.

(vi) Applicants' rights and protections are substantially similar to, or more favorable than, those prescribed by sections 701 and 702 of the Act.

(2) In determining whether provisions for enforcement of the State law referred to in subparagraph (1) of paragraph (b) are adequate, consideration will be given to the extent to which, under State law, provision is made for:

(i) Administrative enforcement, including necessary facilities, personnel, and funding;

(ii) Civil liability for a failure to comply with the requirements of such a State law that is substantially similar to, or more extensive than, that provided under section 706 of the Act;

(iii) A statute of limitations for civil liability or substantially similar or longer duration as that provided under section 706 of the Act; and

(iv) A scope of discovery relating to a creditor's credit granting standards that is at least equivalent to that provided under section 706(j) of the Act.

(d) **Public Notice of Filing and Proposed Rule Making.** In connection with any application that has been filed in accordance with the requirements of paragraphs (a) and (b) of this Supplement and following initial review of the application, a notice of such filing and proposed rule making shall be published by the Board in the *Federal Register*, and a copy of such application shall be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank for each Federal Reserve District in which the State making the application is situated. A period of time shall be allowed from the date of such publication for interested parties to submit written comments to the Board regarding that application.

(e) **Exemption from Requirements.** If the Board determines on the basis of the information before it that, under the law of a State, a class of credit transactions is subject to requirements substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act and that there is adequate provision for State enforcement, the Board will exempt the class of credit transactions in that State from the requirements of sections 701 and 702 of the Act in the following manner and subject to the following conditions:

(1) Notice of the exemption shall be published in the *Federal Register,* and the Board shall furnish a copy of such notice to the State official who made application for such exemption, to each Federal authority responsible for administrative enforcement of the requirements of sections 701 and 702 of the Act, and to the Attorney General of the United States. Additionally, the Board shall include any exemption granted in an appropriate listing in Supplement II to this Part. Any exemption granted shall be effective 90 days after the date of publication of such notice in the *Federal Register.*

(2) The appropriate official of any State that receives an exemption shall inform the Board in writing within 30 days of any change in the State laws referred to in subparagraphs (b)(1) and (b)(3). The report of any such change shall contain copies of the full text of that change, together with statements setting forth the information and opinions regarding that change that are specified in subparagraphs (b)(2) and (b)(4). The appropriate official of any State that has received such an exemption also shall file with the Board from time to time such reports as the Board may require.

(3) The Board shall inform the appropriate official of any State that receives such an exemption of any subsequent amendments of the Act (including the implementing provisions of this Part, the Board's formal interpretations, and interpretations or approvals issued by an authorized official or employee of the Federal Reserve System) that might necessitate the amendment of State law for the exemption to continue.

(4) No exemption shall extend to the administrative enforcement or civil liability provisions of sections 704 and 706 of the Act. After an exemption is granted, the requirements of the applicable State law shall constitute the requirements of sections 701 and 702 of the Act.

(f) **Adverse Determination.** (1) If, after publication of a notice in the *Federal Register* as provided under paragraph (d), the Board finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Board shall notify the appropriate State official of the facts upon which such findings are based and shall afford that State authority a reasonable opportunity to demonstrate or achieve compliance.

(2) If, after having afforded the State authority such opportunity to demonstrate or achieve compliance, the Board finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Board shall publish in the *Federal Register* a notice of its determination regarding the application and shall

furnish a copy of such notice to the State official who made application for such exemption.

(g) **Revocation of Exemption.** (1) The Board reserves the right to revoke any exemption granted under the provisions of this Supplement if at any time it determines that the State law does not, in fact, impose requirements that are substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act or that there is not, in fact, adequate provision for State enforcement.

(2) Before revoking any such exemption, the Board shall notify the appropriate State official of the facts or conduct that, in the Board's opinion, warrants such revocation, and shall afford that State such opportunity as the Board deems appropriate in the circumstances to demonstrate or achieve compliance.

(3) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Board determines that the State has not done so, notice of the Board's intention to revoke such exemption shall be published as a notice of proposed rule making in the *Federal Register*. A period of time shall be allowed from the date of such publication for the Board to receive written comments from interested persons to submit written comments to the Board regarding the proposed rule making.

(4) If such exemption is revoked, notice of such revocation shall be published by the Board in the *Federal Register,* and a copy of such notice shall be furnished to the appropriate State official, to the Federal authorities responsible for enforcement of the requirements of the Act, and to the Attorney General of the United States. The revocation shall become effective, and the class of transactions affected within that State shall become subject to the requirements of section 701 and 702 of the Act, 90 days after the date of publication of the notice in the *Federal Register.*

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data or comments. Members of the public are urged to comment not only on provisions they believe should be changed or added, but also on proposed provisions they believe should remain in the regulation. All comments should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 3, 1976. Written comments will be made available for public inspection and copying upon request except as provided in § 261.6(a) of the Board rules regarding availability of information (12 CFR 261). All material submitted should include the docket number R-0031.

This notice of proposed rulemaking is published pursuant to the Board's authority under § 703(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691 b).

By order of the Board of Governors, November 1, 1976.

(signed) Theodore E. Allison

Theodore E. Allison
Secretary of the Board

[SEAL]

Regulation Z
TRUTH IN LENDING
Official Staff Interpretations

(Note: These interpretations are issued under authority of § 130(f) of the Truth in Lending Act and § 226.1(d)(1) of Regulation Z.)

§ 226.6(a) Printing "annual percentage rate" and "finance charge"entirely in capital letters complies with "more conspicuous" requirement of § 226.6(a) when all other terminology required by Regulation Z is shown in lower case let ters with only initial capitals of same type size.

AUGUST 31, 1976.

This is in response to your letter ***, requesting an official staff inter pretation of Regulation Z pursuant to § 226.1(d). You enclosed a copy of the pro missory note used by your credit union and asked whether the disclosure of the finance charge and annual percentage rate complies with the requirements of § 226.6(a).

The face of the note, which incorporates the Truth in Lending disclosures, is printed in six point type. With four exceptions, the text of the note is printed in lower case type with only the initial letters of various sentences and terms capitalized. The exceptions are the name of the credit union, the words "witness our hands and seals," and the terms "finance charge" and "annual percen tage rate," all of which are printed entirely in capital letters. You question whether the latter two terms are printed "more conspicuously than other terminology required by this Part," as required by § 226.6(a).

It is staff's opinion that the terms "finance charge" and "annual percentage rate" are shown in compliance with this provision, since all other required ter minology appearing on the note is printed in lower case letters with only initial capitals. Although the identification of the creditor is a required disclosure under § 226.8(a), this disclosure does not constitute required "terminology." Thus, the fact that the credit union's name is printed in the same manner as the finance charge and annual percentage rate terms does not violate § 226.6(a). Similarly, since the words "witness our hands and seals" do not relate to the terminology required by Regulation Z, the style in which those words are printed is not relevant to the "more conspicuous" requirement of that section.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation. The interpretation relates solely to the specific question presented and does not constitute staff approval of the form as a whole.

Sincerely,

Jerauld C. Kluckman.

Federal Register, September 24, 1976, p. 41908

§ 226.7(b)(1) Creditor not required to continue sending credit balance periodic statements after one is returned as "undeliverable." Creditor's obligation to renew sending credit balance periodic statements if customer informs creditor of new address within ten days of end of billing period.

SEPTEMBER 13, 1976.

This is in reply to your letter ***, requesting an official staff interpretation of Regulation Z. The question you raise is whether § 226.7(b)(1) requires a creditor to continue sending periodic statements to customers with credit balances in excess of $1 when a periodic statement has been returned as "undeliverable" by the U.S. Postal Service.

Until October 28, 1975, Regulation Z did not contain a requirement regarding the sending of credit balance statements. The Board thought that such a requirement was important and put it into effect as part of the amendments in connection with the Fair Credit Billing Act. The Board believed that it was important that consumers with credit balances outstanding be informed of that fact. This requirement was thought to be particularly important in view of the provision in section 165 of the Fair Credit Billing Act and its implementing provision § 226.7(h) of Regulation Z regarding excess payments in open end credit accounts.

Staff believes that a creditor need not continue sending periodic statements to a customer with a credit balance in excess of $1 when one periodic statement (or a refund check) has been mailed and returned as "undeliverable." Continued mailing of statements after having one returned as "undeliverable" would not seem to further the purpose for which the Board inserted the requirement.

You also suggest that the obligation to renew sending periodic statements for a subsequent billing cycle should be triggered only if the customer has informed the creditor of the new address at least ten days prior to the closing date of that billing cycle. Staff is of the opinion that a reasonable period of time after receipt of the notice of the new address should be given before the creditor's obligation to send a periodic statement is triggered. In dealing with a similar problem when defining a "billing error" under § 226.2(j)(6), the Board approved a ten-day period for notice of change of address. Staff believes that receipt of a notice of a customer's new address at least ten days before the end of the billing cycle provides the creditor with a reasonable period of time in which to prepare and send a periodic statement for that cycle. Consequently, staff believes that a creditor who followed the ten-day procedure as outlined above would be in compliance with Regulation Z.

I am enclosing a copy of Public Information Letter 1088 which deals with the same topic.

This letter is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(3) of the Regulation.

Sincerely,

Jerauld C. Kluckman,
Assistant Director.

Federal Register, September 24, 1976, P. 41908

Section 226.7(k) Use of debiting date as transaction date for mail order transactions on open end accounts is permissible.

SEPTEMBER 22, 1976.

This is in reply to your letter ***, raising a question under § 226.7(k)(2)(i) of the Board's recently adopted amendments to Regulation Z regarding identification of transactions on open end credit accounts. You state that your client is considering the sale of consumer products by mail using credit card accounts which will be subject to this provision of Regulation Z. Because you believe that there is no single date readily identifiable as the date on which the transaction takes place, you ask what the date of the transaction for purposes of this section is for mail order transactions. You suggest that the most appropriate date to disclose would be the date on which the amount is debited to the customer's account.

In the normal situation where a customer makes a purchase by use of a credit card, it is staff's view that the date of the transaction for purposes of § 226.7(k) can be readily identified as the date on which the customer presents the card, it is honored, and the sale is completed. However, staff understands that the situation is somewhat different with regard to mail order sales where there is a time lag between the date the customer places the order by mail and the date of delivery by the creditor. There are any number of dates which arguably may be of some relevance to the transaction which takes place. In staff's view, the date the amount is debited to the account is a reasonable date to disclose for purposes of identifying transactions in mail order situations. Therefore, in staff's view, its use would be in compliance with § 226.7(k) of Regulation Z.

I trust this is responsive to your inquiry. This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(3) of the Regulation.

Sincerely,

Jerauld C. Kluckman
Assistant Director.

Federal Register, October 13, 1976, p. 44855

Section 226.2(x) Credit card plan in which customer has privilege of paying in installments only for individual purchases over $40 satisfies requirement that customer has the privilege of paying balance in full or in installments.

SEPTEMBER 23, 1976.

This is in response to your letter ***, in which you requested an official staff interpretation as to whether the Exxon Credit Sale and Revolving Charge Account falls within the § 226.2(x) definition of "open end credit" so that your company, if credit is granted pursuant to such an account in lieu of payment in cash at an established discount not to exceed five per cent, may avail itself of and receive the protection afforded by § 226.4(i) of Regulation Z. You have advised us that "the privilege of paying the balance in full or in installments," one of the conditions contained in the aforesaid definition, is available to all Exxon Credit Sale and Revolving Charge Account credit card holders but that this privilege exists only as to individual purchases of $40 or more. Specifically, you have asked whether this limitation on the privilege to pay in installments would prevent the plan from being characterized as "open end credit."

Regulation Z defines "open end credit" as "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 installments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance." Certain exceptions, not applicable here, follow the above definition.

Staff is in agreement with your opinion that the Exxon Credit Sale and Revolving Charge Account clearly fulfills conditions (1) and (3) as set forth in the above definition. As to whether the plan meets the requirement that the customer have "the privilege of paying the balance in full or in installments," staff is of the opinion that the plan as you have outlined it also satisfies this condition. Although individual purchases under $40 must be paid in full upon billing, other open end plans specify minimum amounts or balances for which payment is due in full upon billing and for which the customer, therefore, does not have the privilege of paying in installments. Staff feels that the $40 individual purchase limitation of your plan is similar to the minimum balance limitations in other open end credit plans, the difference being a matter of degree. Therefore, staff feels that the Exxon Credit Sale and Revolving Charge Account can be considered "open end credit" for purposes of the Truth in Lending Act.

This is an official staff interpretation issued in accordance with § 226.1(d) of Regulation Z. I trust that it is responsive to your inquiry.

Sincerely,

Jerauld C. Kluckman
Assistant Director.

Federal Register, October 13, 1976, p. 44855

Section 226.7(j) Card sent to retailer's open end credit cardholders which activates a Christmas deferred billing program is not an "other similar credit device requiring § 226.7(j) disclosures."

SEPTEMBER 24, 1976.

This is in response to your letter ***, in which you inquire whether a card sent by your retailer client to customers which, when used, activates a Christmas deferred billing program is an "other similar credit device" requiring disclosures under § 226.7(j) of Regulation Z.

You described the program's operation in the following manner: Open end credit cardholders are sent a card which can be used to defer billing on purchases made during November and December. When the card is presented with the customer's credit card during this period, billing for that purchase wil be deferred until the customer's February periodic statement, and no finance charges will be assessed on those purchases made under the plan until the March periodic statement.

It is staff's opinion that the card which activates the Christmas deferred billing program which you have described is not a supplemental credit device under § 226.7(j), and disclosures under that section would be unnecessary. Section 226.7(j) is designed to cover, as stated in Public Information Letter 1052 (a copy of which is enclosed, credit devices which, when used, normally activate cash advances to a customer's account. The deferred billing card which you describe is obviously not "a blank check, payee designated check, blank draft or order;" nor is it "similar credit device" under § 226.7, as it does not activate a credit plan similar to a cash advance plan normally activated by the preceding designations.

I trust this is responsive to your inquiry. This is an official interpretation of Regulation Z issued in accordance § 226.1(d)(3) and relates solely to the questions presented.

Sincerely,

Jerauld C. Kluckman,
Assistant Director.

Federal Register, October 13, 1976, p. 44856

§ 226.2(h) Contractor who does not participate in preparation of loan documents or receive any compensation for assisting customer to obtain financing is not arranger of credit.

§ 226.8(B) Creditor in home improvement loan need not disclose security interest arising only out of separate cash transaction with noncreditor contractor whose services are purchased with loan proceeds.

§ 226.9(a) Notice of right of rescission need not be furnished before consummation of credit transaction.

§ 226.9(a) Creditor in home improvement loan need not provide right of rescission where a security interest in borrower's principal residence may be obtained only by noncreditor contractor whose services are purchased with loan proceeds.

SEPTEMBER 30, 1976.

This is in response to your letter ***, requesting an official staff interpretation on several questions arising under the Truth in Lending Act and Regulation Z.

We understand that all of your questions arise from a single fact situation, which is essentially as follows:

A customer enters into an agreement with a contractor for certain improvements on the customer's principal residence. The contractor assists the customer in obtaining financing for the contract by conducting preliminary negotiations with a bank and assisting the customer in filling out a loan application form to the bank. When the loan between the bank and the customer is consummated, the loan proceeds are used by the customer to pay for the contractor's home repair services. no fee is received by the contractor for its assistance in obtaining the financing. The bank takes no security interest in the customer's property to secure its loan, but under applicable State law the contractor or its subcontractors may obtain a statutory materialmen's lien against the customer's residence to secure payment of the customer's obligations to the contractor.

In connection with this transaction, you ask a series of seven questions. In staff's opinion, an official staff interpretation under § 226.1(d) of Regulation Z would not be appropriate for three of those questions. Those three questions will be dealt with in a separate unofficial staff interpretation to you. This letter, which is an official staff interpretation, will respond to the four remaining questions, which are as follows:

1. Must a creditor disclose, pursuant to § 226.8(b)(5), the possibility of a statutory materialmen's lien against a borrower's property by a noncreditor contractor whose services are purchased with the proceeds of the loan from the creditor? (Section C of your request.)

This question assumes a situation in which a creditor extends a loan whose proceeds will be used to finance a home improvement contract with a contractor who is not a creditor as to that transaction. The contract between the noncreditor-contractor and the customer raises the possibility, under State law, of the retention of a materialmen's and laborers' statutory lien by the contractor or its subcontractors.

Under § 226.8(b)(5), the creditor in a closed end credit transaction must disclose any security interest "held or to be retained or acquired *by the creditor* in connection with the extension of credit." (Emphasis added.) In staff's opinion, this language does not require the creditor to disclose to the customer any security interest which could be acquired or retained only by a third party who is not a creditor as to that transaction. Thus, it would not be necessary for the creditor in this situation to include in its loan disclosure statement a description or identification of a materialmen's and laborer's statutory lien running only in favor of the non-creditor-contractor or its subcontractors.

2. Is a contractor who assists the customer in obtaining a loan to finance the contractor's services an arranger of credit under § 226.2(h), when the contractor does not participate in preparation of the loan documents or receive any compensation for the service other than payment of its repair contract with the loan proceeds? (Section D of your request.)

In the case under discussion, the home improvement contractor assisted the customer in obtaining financing for its contract by preparing a loan application for the customer with the creditor-bank and acting as intermediary between the customer and the bank in the loan negotiations. The contractor did not participate in the preparation of any of the documents evidencing the credit transaction nor did it receive any separate fee or compensation for its services in connection with the financing.

In order to constitute an arranger of credit under § 226.2(h) and thus a creditor under § 226.2(s), the contractor must either have received "consideration" for its services or assisted in preparation of the contract documents with knowledge of the credit terms. Since the contractor's activities do not meet the second element of that definition, it is not an arranger unless it received compensation for its services in connection with the financing. Apparently, it is your belief that the contractor received such compensation by virtue of the fact that it ultimately received the proceeds of the loan in payment for its home improvements services.

In staff's opinion, the mere fact that a seller of goods or services is paid the cash price for those goods or services out of the proceeds of a direct loan obtained by the customer for that purpose does not in itself make the seller an arranger of credit. In the case you described, the contractor's assistance in procuring financing for the customer is of benefit only to the extent that it enables the contractor to sell its goods or services to a customer who might otherwise not be able to do business with the contractor. in our opinion, this does not rise to the level of "consideration" within the meaning of § 226.2(h). In the absence of any tangible bnenefit to the contractor beyond receipt of the cash purchase price, as for example by participation in the lender's interest yield on the loan or by a loan arrangement fee imposed on the customer, the contractor in this case is not an arranger of credit.

As a corollary to this question, you also ask under what circumstances a lender who is not the seller must make credit sale disclosures as opposed to loan disclosures. Under § 226.6(d), a nonseller-creditor must make credit sale disclosures only if the credit transaction involves a seller who is also a creditor and if the nonseller-creditor joins with that seller to make disclosures.

3. When must notice of the right of rescission under § 226.9 be furnished to the customer in a rescindable transaction? (Section E of your request.)

Section 226.8(a) requires the creditor to "make the disclosures required *by this section* *** before the transaction is consummated." (Emphasis added.) In contrast, § 226.9 specifies no particular time at which the notice of the right of rescission must be given to the consumer. It may be given before or after consummation is deemed to have occurred under local law. In any case, the three-day rescission period will begin to run only after both the rescission notice and other material disclosures have been delivered and the transaction has been consummated.

4. Must a creditor in a home improvement transaction provide the customer with a notice of the right of rescission where a security interest on the borrower's principal residence may be obtained only by a noncreditor contractor? (Section H of your request.)

In this situation, the bank which extends a home improvement loan retains no security interest to secure the credit extension. The only security interest which might arise is a materialmen's and laborers' statutory lien running in favor of the contractor for whose services the customer uses the proceeds of the loan in a separate noncredit transaction.

Section 226.9 applies to credit transactions in which a security interest is or will be retained or acquired in the customer's principal residence. In the case which you describe, the security interest is not retained in connection with the credit transaction, but occurs as the result of the separate cash transactions for which the customer uses the loan proceeds. Since the security interest here does not secure the extension of credit, § 226.9(a) does not require the creditor to provide notice of the right of rescission.

As we indicated above, we do not believe that your remaining questions are appropriate for an official staff interpretation, in view of the nature of those questions. Therefore, they will be dealt with in a separate letter which does not have official status under 130(f) of the Act and § 226.1(d)(3) of the Regulation.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d) of the Regulation.

Sincerely,

Jerauld C. Kluckman,
Assistant Director.

Federal Register, October 29, 1976, p. 47409

§ 226.4(a)(6) It is not necessary to itemize the cost of the various components of VSI insurance.

OCTOBER 4, 1976.

This is in response to your letters of ***, and ***, requesting clarification of our Public Information Letter 1075, dated July 6, 1976. In our letter, we stated that where several types of policies are included in one "Lender's Comprehensive Single Interest Insurance Policy," each component remains subject to the appropriate disclosure requirements of Regulation Z.

You ask whether the disclosure made by your bank with regard to Vendor's Single Interest (VSI) insurance is in compliance with Regulation Z. Your bank requires customers to obtain VSI insurance, and the policy offered by your bank includes coverage for physical damage as well as for confiscation and skips. Your disclosure statement lists the price charged for the policy but does not break that figure down to indicate which portion is attributable to physical damage insurance and which to confiscation and skip insurance.

In staff's opinion, Regulation Z does not require a creditor to itemize these components of VSI insurance. When we said in Public Information Letter 1075 that the cost of each type of insurance in a comprehensive policy must be itemized, we were distinguishing VSI insurance (including physical damge and confiscation and skip coverage) from instrument non-filing insurance, repossessed vehicle insurance, and holder in due course insurance. VSI insurance must be disclosed in accordance with § 226.4(a)(6) and Interpretation § 226.404, but itemization of the cost of its components is not required.

I note the statement in your August 27 letter that our staff told you instrument non-filing insurance was part of VSI insurance; that is not correct and I do not wish to leave you with that understanding. As explained in Letter 1075, instrument non-filing insurance is separate from VSI insurance and its disclosure is governed by § 226.4(b)(2).

This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(3) of the Regulation. I trust it is responsive to your inquiry.

Sincerely,

Jerauld C. Kluckman,
Assistant Director.

Federal Register, October 29, 1976, p. 47410

[FC—0001]

§ 226.6(a) Printing "annual percentage rate" and "finance charge" entirely in capital letters complies with "more conspicuous" requirement of § 226.6(a) when all other terminology required by Regulation Z is shown in lower case letters with only initial capitals of same type size.

AUGUST 31, 1976.

This is in response to your letter *** requesting an official staff interpretation of Regulation Z pursuant to § 226.1(d). You enclosed a copy of the promissory note used by your credit union and asked whether the disclosure of the finance charge and annual percentage rate complies with the requirements of § 226.6(a).

The face of the note, which incorporates the Truth in Lending disclosures, is printed in six point type. With four exceptions, the text of the note is printed in lower case type with only the initial letters of various sentences and terms capitalized. The exceptions are the name of the credit union, the words "witness our hands and seals" and the terms "finance charge" and "annual percentage rate," all of which are printed entirely in capital letters. You question whether the latter two terms are printed "more conspicuously than other terminology required by this Part," as required by § 226.6(a).

It is staff's opinion that the terms "finance charge" and "annual percentage rate" are shown in compliance with this provision, since all other required terminology appearing on the note is printed in lower case letters with only initial capitals. Although the identification of the creditor is a required disclosure under § 226.8(a), this disclosure does not constitute required "terminology." Thus, the fact that the credit union's name is printed in the same manner as the finance charge and annual percentage rate terms does not violate § 226.6(a). Similarly, since the words "witness our hands and seals" do not relate to the terminology required by Regulation Z, the style in which those words are printed is not relevant to the "more conspicuous" requirement of that section.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation. The interpretation relates solely to the specific question presented and does not constitute staff approval of the form as a whole.

Sincerely,
Jerauld C. Kluckman

[FC—0002]

§ 226.7(b)(1) Creditor not required to continue sending credit balance periodic statements after one is returned as "undeliverable." Creditor's obligation to renew sending credit balance periodic statements if customer informs creditor of new address within ten days of end of billing period.

September 13, 1976.

This is in reply to your letter ***, requesting an official staff interpretation of Regulation Z. The question you raise is whether § 226.7(b)(1) requires a creditor to continue sending periodic statements to customers with credit balances in excess of $1 when a periodic statement has been returned as "undeliverable" by the U.S. Postal Service.

Until October 28, 1975, Regulation Z did not contain a requirement regarding the sending of credit balance statements. The Board thought that such a requirement was important and put it into effect as part of the amendments in connection with the Fair Credit Billing Act. The Board believed that it was important that consumers with credit balances outstanding be informed of that fact. This requirement was thought to be particularly important in view of the provision in section 165 of the Fair Credit Billing Act and its implementing provision § 226.7(h) of Regulation Z regarding excess payments in open end credit accounts.

Staff believes that a creditor need not continue sending periodic statements to a customer with a credit balance in excess of $1 when one periodic statement (or a refund check) has been mailed and returned as "undeliverable." Continued mailing of statements after having one returned as "undeliverable" would not seem to further the purpose for which the Board inserted the requirement.

You also suggest that the obligation to renew sending periodic statements for a subsequent billing cycle should be triggered only if the customer has informed the creditor of the new address at least ten days prior to the closing date of that billing cycle. Staff is of the opinion that a reasonable period of time after receipt of the notice of the new address should be given before the creditor's obligation to send a periodic statement is triggered. In dealing with a similar problem when defining a "billing error" under § 226.2(j)(6), the Board approved a ten-day period for notice of change of address. Staff believes that receipt of a notice of a customer's new address at least ten days before the end of the billing cycle provides the creditor will a reasonable period of time in which to prepare and send a periodic statement for that cycle. Consequently, staff believes that a creditor who followed the ten-day procedure as outlined above would be in compliance with Regulation Z.

I am enclosing a copy of Public Information Letter 1088 which deals with the same topic.

This letter is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(3) of the Regulation.

Sincerely,
Jerauld C. Kluckman,
Assistant Director.

[12 CFR Part 226, FC-0011]

§ 226.6(a) Asterisks may be used to make finance charge more conspicuous on computer-printed periodic statement in which all printing is of identical size and boldness.

OCTOBER 26, 1976.

This is in reply to your letter dated ..., asking if the manner in which your company identifies the finance charge on the periodic statement sent to its open end credit plan customers meets the "more conspicuous" requirement of § 226.6(a) of Regulation Z.

Because your company's computers are unable to print the term "finance charge" in a type size larger or bolder than other computer-generated printing, the finance charge appears as the first item in the transaction description column and a double asterisk is added immediately before and immediately after the words "finance charge." The form, thus, would appear as follows:

"**finance charge** on avg. daily bal. of $000.00."

It is the opinion of staff that such a use of asterisks complies with the provisions of § 226.6(a) requiring that the finance charge be printed more conspicuously than other required terminology. We also note that this disclosure is proper in that only the words "finance charge" are set off by asterisks.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation. I trust that it is responsive to your inquiry.

Sincerely,

Janet Hart
Director

[12 CFR Part 226, FC-0012]

§ 226.13(a)(2) Additional features on card issued to replace a previously accepted credit card do not prevent card from being considered "in substitution" for that card under § 226.13(a)(2).

NOVEMBER 2, 1976.

This is in response to your letter of ..., requesting an official staff interpretation of § 132 of the Truth in Lending Act and § 226.13(a) of Regulation Z concerning the unsolicited issuance of credit cards with additional features in substitution for previously issued credit cards.

In your letter you indicated that your bank currently issues (a credit card). In the near future, you propose to issue to all of your current cardholders a new card under (another name) in substitution for the existing (card). The (new) card would provide the cardholder with all the features of the (old card) and, additionally, would provide a check guarantee feature not available on the (old card). The check guarantee features would permit a merchant who accepts (the new card) to have any check presented by a ( ) cardholder guaranteed by communicating with the bank and obtaining an authorization number. In the event that the check later was returned to the merchant unpaid for any reason, the merchant would be permitted to return the check to the bank and the bank would pay it and debit the amount to the credit card account of the customer. You have asked for an official staff interpretation as to whether the (new) card with the check guarantee feature can be issued as a substitute card to existing (card) holders without violating the prohibition on the unsolicited issuance of credit cards.

The staff is of the opinion that the fact that the (new) card proposed to be issued provides an additional feature not present on the (cards) currently held by customers does not prevent the (new) card from being considered a card issued in substitution for an accepted credit card in accordance with § 226.13(a)(2) of Regulation Z. We should point out, however, that this position is based on the assumption that the (credit card) which is currently held by your bank's customers will be taken out of circulation or voided in some manner. Otherwise, the issuance of the (new) card would be viewed as an issuance not of a substitute card but of a supplemental card which may not be issued on an unsolicited basis.

This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(3) and is confined to the facts as stated above. I trust that it is responsive to your inquiry.

Sincerely,

Jerauld C. Kluckman
Assistant Director.

[12 CFR Part, FC-0016]

§ 226.7(k) Transactions with corporate subsidiaries of the card issuer when those subsidiaries operate under completely different names from the card issuer and billing is only in the name of the card issuer, may be described in three party, and not two party manner. The companies would not be considered the same or related person for billing purposes.

§ 226.13(h) State law controls as to whether a card issuer and business card holder must renegotiate a contract setting liability limits higher than $50, entered into prior to effective date of § 135 of the Act.

This section may apply when, for its own reasons, a business actually provides less than ten cards to less than ten of its employees. However, a situation in which the section is not in a position to provide ten or more cards to ten or more employees may be an attempt to circumvent or evade the law.

NOVEMBER 9, 1976

This is in response to your letters of ... and ... raising several questions under Regulation Z. To the extent possible, I will attempt to answer the questions in the order presented in the September 2 letter.

1. Your first question is whether a card issuer and a business who, prior to the effective date of § 135 of the act, entered into a special agreement limiting the liability of the business in the event of unauthorized use of any of its credit cards are compelled by § 135 of the Act and § 226.13(h) of the Regulation to enter into a new contract to avoid the liability limits of § 226.13(b). As we understand it, the facts underly your question can be exemplified as follows:

> On a date prior to October 28, 1974, Card Issuer entered into a contract with Business for issuance of ten or more cards to Business' employees to be used, at least in part, for business purposes. This contract limited Business' liability for unauthorized use of any of the cards so issued to $100, rather than $50 as specified by § 113 of the Act and § 226.13(b) of Regulation Z.

It is staff's view that, until the Act was amended by the addition of § 135, this contract was unenforceable as a matter of Federal law. We assume you agree.

Your question is whether, now that the law permits such an agreement by virtue of the addition of § 135 of the Act and § 226.13(h) of Regulation Z, a new contract must be entered into in order to avoid the $50 limit and use the $100 liability limit in its place. It is staff's opinion that such a contract is presently unobjectionable from the standpoint of the Federal Act and Regulation Z, so long as all the criteria of § 226.13(h) are met.

However, this situation may raise a serious question under local, such as whether such a contract is void *ab intitio,* because it contravened prevailing law when entered into and, thus, could be viewed as forever of no force and effect. Staff ventures no opinion with respect to local law in your jurisdiction.

2. Your second question concerns the applicability of § 226.13(h) to situations in which a card issuer may issue ten or more credit cards to a business which, for its own reasons, issues all or some of the cards to fewer than ten employees. your concern is that § 135 of the Act, in your view, appears to permit differing contractual liability only when the cards are actually provided to 10 or more employees. It is this staff's view that § 226.13(h) was written on the general assumption that the ten or more cards issued to a business will, indeed, be provided to ten or more employees of that business. however, the Regulation takes into account the fact that there may be instances in which the business may, for its own reasons, have fewer than ten employees holding the cards. For example, an employee may terminate employment and surrender his or her card, thus bringing the number of employees holding the cards to fewer than ten. It is staff's opinion that in such cases it was not intended by Congress or the Board that the contract setting special liability limits between the card issuer and the business should be abrogated.

However, staff is of the opinion that were a card issuer to issue ten cards to a business with fewer than ten employees likely to hold the card and no plans to increase the size of its staff (for example, where the business consists of only three employees), any attempt to invoke the provisions of § 226.13(h) could be viewed as an attempt to circumvent or evade the Act and Regulation.

3. Your final question is with respect to the identification of transactions requirements of § 226.7(k). The card issuer, an airline company, has a hotel chain and a restaurant chain as wholly owned subsidiaries. The credit card, issued in the name of the airline company, may be used to purchase goods and services at the hotels and restaurants of these subsidiaries. The names of the airline, hotel, and restaurant companies are all different from each other. You ask whether transactions with these hotels and restaurants may be identified by the name and address of the establishment providing the goods and services or whether they should be identified with reference to the particular goods or services purchased.

In staff's view, the situation you describe does not result in the hotels and restaurants being "the same person or related persons" in relation to the airline company who issued the credit card as was contemplated by § 226.7(k)(2)(i). The basic purpose of these recent amendments is to require identification of transactions in a manner which will assist the customer in recalling a charge made. one of the prime factors underlying development of these regulations was a concern for how the customer views the transaction. In situations such as yours, where the card issuer and the corporate subsidiary operate under entirely different names and the periodic statement is sent in the name of the card issuer alone, staff views it as highly unlikely that any but the most sophisticated of customers would know of the corporate connection between the card issuer and the subsidiary. In such situations staff views it as most beneficial and, therefore, permissible to identify such transactions by providing the amount and date of each transaction and the seller's name and city—state address.

This is an official staff interpretation of Regulation Z issued under § 226.1(d)(3) and limited to the facts enumerated above. I trust it responsive to your inquiry.

Sincerely,

Jerauld C. Kluckman,
Assistant Director.

[12 CFR Part 226, FC-0017]

§ 226.7(k) Credit union drafts which are debitted to a line of credit may be identified by describing them as Rite on Line drafts. Description must include amount and date of transaction or date placed on the draft if signed by the customer.

NOVEMBER 9, 1976

This is in reply to your letter of ... raising questions under Regulation Z regarding a personal line of credit program offered by your credit union. You indicate that the customer is issued a book of drafts which may be written for cash, for deposit to the customer's checking account, or to a third party. The drafts, which are guaranteed by the credit union, are payable through a special account in the credit union's bank. Upon payment by the credit union's bank, the draft is returned to the credit union and debited to the customer's credit account.

You state that the periodic statements sent to the customers identify such transactions as Rite-on-Line drafts and show the amount of the draft and the date the amount is debited to the customer's account. You ask whether this procedure is in compliance with Regulation Z.

Staff believes that the description you provide, insofar as it characterizes the transaction as a Rite-on-Line draft and provides the amount of the transaction, is in compliance with the regulation. However,§ 226.7(k)(3) of the recently adopted amendments to Regulation Z (copy enclosed) will ultimately require after October 28, 1977, that you disclose either the date of the transaction, or the date which appears on the draft, if the draft is signed by the customer. A transition period has been provided to enable creditors to adjust their systems, if necessary, to meet these requirements. The transition period provision permits the use of the debiting date until October 28, 1976. Between October 28, 1976, and October 28, 1977, the debiting date may be substituted for the date otherwise required if, because of operational limitations, the creditor cannot disclose the primarily required date. After October 28, 1977, the regulation contemplates that creditors will have procedures in place to procure the primarily required date. If, therefore, permits use of the debiting date only if those procedures do not procure the primarily required date in a particular instance.

I trust this is responsive to your inquiry. This is an official staff interpretation of Regulation Z issued under § 226.1(d)(3) and limited to the facts outlined herein.

Sincerely,

Jerauld C. Kluckman
Assistant Director.

[12 CFR Part 226, FC-0018]

§ 226.6(g) Requiring additional security in the form of a third party security agreement after customer experiences difficulty in meeting obligation is "subsequent occurrence" which does not require new disclosures when all terms of the original transaction remain unchanged.

NOVEMBER 11, 1976

This is in response to your letter of ..., in which you inquire whether a creditor must make the disclosures required by the Truth in Lending Act to a guarantor who executes a surety agreement subsequent to the original extension of credit. The agreement was executed after the customer experienced difficulty in meeting the obligation. In your letter you stated that all terms of the original transaction remained in force after execution of the surety agreement.

It is staff's opinion that no disclosures are required under Regulation Z (which implements the Truth in Lending Act) when additional security, such as the surety agreement by a third party which you describe, is required subsequent to consummation of the transaction, if there are no other charges in the terms of the obligation. While the definition of "customer" in Regulation Z (§ 226.2(u)) includes a "comaker, endorser, gurantor, or surety ... who is or may be obligated to repay the extension of consumer credit," the Regulation states in § 226.6(e) that disclosures must be given only to one customer who is primarily liable unless the transaction is rescindable under § 226.9.

Furthermore, in this instance the taking of additional security subsequent to consummation of the transaction would be considered a "subsequent occurrence" under § 226.6(g) of the Regulation. That paragraph provides that no new disclosures are required when an agreement executed subsequent to the delivery of the required disclosures results in an inaccuracy in the information disclosed. Footnote 6 to § 226.6(g) states that such "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 interest in such circumstances."

I am enclosing a copy of the Regulation Z pamphlet which includes the statute and the relevant sections of the Regulation. This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) and relates solely to the questions presented. I trust this has been responsive to your inquiry.

Sincerely,

Jerauld C. Kluckman,
Assistant Director.

[12 CFR Part 226, FC-0019]

§ 226.2(n), § 226.4(a), § 226.8(c) Cost of optional service contract sold with automobile is not part of finance charge; it may be disclosed as part of cash price *or* as any other charge.

NOVEMBER 12, 1976

This is in response to your letter of ..., inquiring as to the proper method of disclosure under Truth in Lending and Regulation Z of a service contract sold by an automobile dealer at the time of the sale of an automobile. The service or maintenance "package" may take the form of a book of coupons for certain service privileges or may consist of a certificate entitling the buyer to a discount on all service work done by that dealer on that vehicle for a stated period. These "packages" are sold for a consideration over and above the vehicle's cash price and are optional with the vehicle buyer.

You ask whether the existence and cost of such a service contract must be disclosed in order to exclude such cost from the finance charge revealed on the credit sale disclosure statement. Since the cost of the service contract is not "imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit," it is not a finance charge within the meaning of § 226.4 of Regulation Z. It therefore need not be itemized or described in order to be excluded from the finance charge.

You ask further whether the cost of the service contract should be disclosed as a part of the "cash price" under § 226.8(c)(1) or whether it should be disclosed as an "other charge" under § 226.8(c)(4). "Cash price" is defined in § 226.2(n) to mean the price at which a creditor offers to sell for cash the property or services which are the subject of the consumer credit transaction and may include the cash price of accessories or services related to the sale. Since the service contract can be viewed as a service related to the sale, it appears to staff that inclusion of the cost in the cash price is permissible under Regulation Z. You will note, however, that § 226.2(n) says that the cash price "*may* include the cash price of accessories or services" (emphasis added) and does not require that such cost be included in the cash price. Thus, it appears that these costs may also be treated as "other charges" under § 226.8(c)(4), since they are included in the amount financed but are not part of the finance charge.

This letter is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the regulation, and I trust that it is responsive to your inquiry.

Sincerely,

Janet Hart
Director.

[12 CFR Part 226, FC-0020]

§ 226.2(p) A prejudgment workout arrangement, which is in writing and involves either a finance charge or more than four installments constitutes an extension of consumer credit subject to the disclosure requirements of § 226.8(b) and (d) regardless of whether the original transaction was classified as "open end credit" or "credit other than open end."

§ 226.7(f) Creditor need not disclose a change in credit terms of an open end credit account under § 226.7(f) to those creditors' cardholders who are not affected by the change in terms.

NOVEMBER 3, 1976

This is in response to your letter of ..., requesting an official staff interpretation with regard to the effect of Regulation Z on an open end credit plan collection program which your bank may implement.

You indicate in your letter that the collection program proposed would involve an existing open end credit plan in which the customers had lost their privileges as credit cardholders at a predetermined time due to non-payment, with no further advances being made until the account has been paid to the bank's satisfaction. The bank wishes to offer delinquent customers the opportunity to repay their debts on terms differing from the original open end credit plan. For example, the bank may allow repayment of the indebtedness with the monthly principal payments reduced (e.g., 5 per cent of the principal each month as opposed to 10 per cent of the principal) and with the finance charges either reduced (e.g., 6 per cent annual percentage rate as compared to the normal 18 per cent open end credit annual percentage rate) or eliminated.

You question whether the collection program described would:

1) Render the credit plan other than open end, thereby requiring disclosures under § 226.8 of Regulation Z;

2) Require the making of new open end disclosures under § 226.7(a) when the debtor has paid the account to the bank's satisfaction in order for the customer to receive new advances or revolving credit privileges and

3) Constitute a change in "credit terms" which would require an initial disclosure to all credit cardholders if the collection program is adopted on a general non-objective basis.

Staff is of the opinion that the issue of whether a prejudgment workout arrangement is subject to the other than open end credit disclosures of § 226.8 is dependent upon whether such a workout arrangement is informal (e.g., by telephone) or written. A prejudgment workout arrangement, which is in writing and

involves either a finance charge or more than four installments, constitutes an extension of consumer credit subject to the disclosure requirements of § 226.8(b) and (d) regardless of whether the original transaction was classified as "open end credit" or "credit other than open end."

Therefore, if your collection program involves a formal written prejudgment workout arrangement, then the bank would be required to make other than open end credit disclosures in accordance with § 226.8. Furthermore, should the bank decide to extend open end credit to the debtor after satisfaction of the delinquent account, the debtor should be provided once again with the initial open end disclosures to prevent confusion.

If the bank adopts such a collection program, staff believes that such a program would not require the bank to disclose a change in "credit terms" under § 226.7(f) to all of the bank's credit cardholders. Staff views the requirements of § 226.7(f) as requiring a creditor to disclose a change in terms in an open end credit plan only to those customers who would be affected by such change, since disclosure to unaffected customers could cause confusion as to the status of their accounts.

This letter is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation. I trust it is responsive to your inquiry.

Sincerely,

Jerauld C. Kluckman
Assistant Director.

[12 CFR Part 226, FC-0023]

§ 226.8(b) "Security interest under the Uniform Commercial Code" adequately describes type of security interest taken.

NOVEMBER 22, 1976

This is in response to your letter of ... requesting an official interpretation on the disclosure of the type of a security interest under § 226.8(b)(5) of Regulation Z.

Section 226.8(b)(5) of Regulation Z requires the creditor to disclose, among other things, the "type of any security interest held or to be retained or acquired by the creditor." You submit three phrases which are intended to describe the type of a security interest taken by the creditor and request staff's opinion as to whether each of these phrases constitutes a sufficient description of the security interest under § 226.8(b)(5).

First, you ask whether the disclosure of a "security interest under the Uniform Commercial Code" is a sufficient description when the creditor obtains a security interest subject to the UCC. In staff's opinion, this language would be sufficient to comply with that requirement of § 226.8(b)(5) in the situation you describe. Staff believes that this provision of the Regulation does not require creditors to provide a detailed statement of the type of interest acquired or a citation to any specific statutory provision pursuant to which the security interest under the Uniform Commercial Code is a "type" of security interest and may be adequately described using the language you suggest.

Additionally, you ask whether a consensual or contractual security interest may be disclosed in language such as the following: "a security interest established by our contract" or "a security interest through our agreement." In staff's opinion, this language does not adequately describe the type of security interest taken, pursuant to § 226.8(b)(5). The words "contract" and "our agreement" may not convey any particular meaning to the customer or assist him in identifying the legal document from which the security interest arises. However, if the languae you propose could be modified to more specifically identify the contract or agreement referred to, staff believes that such a disclosure would adequately describe the type of security interest involved. For example, the statement might refer to the specific title of the document which evidences the security interest.

This is an official staff interpretation of Regulation Z issued pursuant to § 226.1(d)(3) of the Regulation. Staff's conclusions relate solely to the facts and issues presented.

Sincerely,

Jerauld C. Kluckman
Assistant Director.

[12 CFR Part 226, FC-0024]

§ 226.7(b) Open end billing statement need not disclose posting dates of transactions (other than payments and credits) in order to comply with required disclosure of balance on which the finance charge was computed and how that balance was determined.

NOVEMBER 22, 1976

This is in response to your letter of ..., in which you request an official interpretation of § 226.7(b)(1)(viii) of Regulation Z which requires disclosure of "the balance on which the finance charge was computed and a statement of how that balance was determined."

Your clients are open end credit card issuers that are considering adopting an optional method of computing finance charges on the basis of an average daily balance which includes purchases posted to the cardholder's account on the current statement from the date of such posting in instances where the cardholder does not timely pay in full the new balance shown on the previous periodic statement.

Your clients electing this option have decided to make the disclosure concerning this method of computation of the finance charge on the reverse of the periodic statement (as permitted by § 226.7(c)(2)). The disclosure statement reads in part:

> "The amount of any FINANCE CHARGE incurred by you during this billing cycle, as disclosed on the face of this Statement, was computed by multiplying the (monthly) Periodic Rate(s) times the Average Daily Balance(s), both of which are also disclosed on the face of this Statement. The "Average Daily Balance" is the sum of the outstanding balances for each day of the current billing cycle (excluding any previously billed but unpaid FINANCE CHARGE) divided by the number of days in the current billing cycle, computed separately for Cash Advances and for Purchases."

The average daily balance and transaction dates will appear on the face of the statement. You inquire whether § 226.7(b)(1)(viii) requires the disclosure of posting dates on the face of the statement in addition to transaction dates in order to permit the cardholder to compute the average daily balance. It is staff's opinion that the posting date of the transaction need not be disclosed to comply with the § 226.7(b)(1)(viii) requirement that the method of determining the balance on which the finance charge was computed be disclosed.

The requirement that the method of determination of the average daily balance be disclosed does not require that the customer be able to compute the balance on which the finance charge is based from the face of the statement. Compliance with the Regulation may be achieved by providing the customer with the method of the computation. The requirement of posting dates would unnecessarily complicate the disclosure and necessitate the printing of two separate dates (i.e., the transaction date and the posting date) which could result in confusion on the part of the customer. It should be noted, however, that § 226.7(b)(1)(iii) requires the use of posting dates for disclosure of payments and credits on periodic statements.

This is an official interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation. It is limited in its scope to the questions presented herein. I trust this is responsive to your inquiry.

Sincerely,

Jerauld C. Kluckman
Assistant Director.

[12 CFR Part 226, FC-0027]

§ 226.7(k) Creditor who substitutes debiting date and voucher number under 7(k)(7)(i)(A) has not made an erroneous billing. Creditor who uses 7(k)(7)(i)(B) option and does not make substitutions has made an erroneous billing.

NOVEMBER 23, 1976

This is in reply to your letter of ... raising questions under § 226.7(k) of Regulation Z. Your question is whether a creditor who operates consistent with § 226.7(k)(7)(i)(A) during the October 28, 1976, through October 28, 1977, transition period must treat any description rendered thereunder as a billing error and erroneous billing.

Specifically, that section permits a creditor to substitute the debiting date for the date otherwise required by the regulation when, due to operational limitations, the primarily required date is not available for purposes of billing. Further, this section permits the creditor to substitute a voucher number for the merchant's name and city/state address or the description of the property or services, as applicable, when, due to operational limitations, the primarily required information is not available for purposes of billing. You ask whether doing so under clause (A) results in an erroneous billing.

In staff's view, a creditor who has made the substitutions permitted in clause (A) would not be considered to have made an "erroneous billing" under § 226.14(b). Of course, a customer may at any time inquire as to matters which appear on a periodic statement and the creditor would be obligated to respond within the time period set forth in § 226.14(a). However, if the creditor has made the proper substitutions under § 226.7(k)(7)(i)(A) the description of the transaction would not be considered erroneous.

This is in contrast to § 226.7(k)(7)(i)(B) in which the creditor is permitted, during the transition period, to omit information which is not available. In such a case any inquiry as to the identification of the transaction should be answered as a billing error. Further, the absence of the information should be considered an erroneous billing and documentary evidence of the charge must be provided to the customer.

I trust this is responsive to your inquiry. This is an official staff interpretation of Regulation Z issued under § 226.1(d)(3) and limited in its application to the facts set forth above.

Sincerely,

Jerauld C. Kluckman
Assistant Director.

[12 CFR Part 226, FC-0028]

§ 226.7(k) Creditor may freely substitute debiting date for other required date for foreign transactions. Such a disclosure would not be an erroneous billing. *Other* information required to be disclosed may be omitted and the lack thereof treated as billing error and erroneous billing upon customer inquiry. Creditor who substitutes voucher number for description of goods and services or merchant's name and address during transition period (October 28, 1976-October 28, 1977) has not made erroneous billing.

NOVEMBER 23, 1976

This is in reply to your letter of ..., in which you raise questions under § 226.7(k) of Regulation Z regarding identifying transactions on open end credit account periodic statements.

Your first question is whether under § 226.7(k)(5), disclosure of the date of debiting a foreign transaction to an account triggers the billing error procedure under § 226.7(k)(4) or whether disclosure of the debiting date is all the regulation requires. It is staff's opinion that § 226.7(k)(5)(i) was intended to specifically permit the use of the debiting date in place of the date which would otherwise be required under the regulation. The comments received indicated that significant difficulty could be expected, because of differences in customs, language and law of foreign countries, in retrieving and disclosing the primary information required by § 226.7(k). This justified, in our opinion, the different regulatory treatment of foreign transactions.

A customer may, of course, submit a proper written notification of a billing error for any such transaction under the procedures of § 226.14(a) and the creditor would be obligated to respond. However, providing such a date would not constitute an erroneous billing for which finance charges would have to be forgiven under § 226.14(b).

Section 226.7(k)(5)(ii) provides that the procedures provided in § 226.7(k)(4) apply to foreign transactions whether or not a creditor has adequate procedures to capture the primary identifying information. In staff's view, this provision does not qualify the right of a creditor to provide the debiting date instead of the date otherwise required, as permitted in § 226.7(k)(5)(i), as discussed above. That specific provision of § 226.7(k)(5)(i) regarding the date is controlling in this situation, overriding any of the more general provisions of § 226.7(k)(1), (2), (3) or (4). It is expected that creditors, in order to avoid excessive numbers of billing error inquiries, would attempt to adequately identify foreign transactions in some reasonable manner possibly in the manner prescribed by § 226.7(k) generally. However, realizing the difficulty, if not impossibility, of developing adequate procedures to capture the information required by this law in such cases, the Board provided that the debiting date may always be substituted for the date otherwise required. Further, with regard to any other required information, the creditor may make the adjustments permitted in § 226.7(k)(4) and treat any inquiry as a billing error notice and the absence of the information as an erroneous billing and provide documentary evidence of the charge, even though the creditor may not have adequate procedures in place to capture the primarily required information in the first instance.

You also ask whether a creditor who, under § 226.7(k)(7)(i)(A), substitutes the voucher number for the merchant's name and address or for the description of goods or services purchased, as applicable, during the transition period between October 28, 1976, and October 28, 1977, has complied with the regulation. In staff's view, the regulation permits a creditor to freely make such a substitution if operational limitations prevent making the primarily required disclosures. A creditor who makes a substitution remains obligated to respond to any inquiry regarding the transaction under the error resolution procedures of § 226.14 but such an identification, properly made, would not be considered an erroneous billing under § 226.14(b).

This is an official staff interpretation of Regulation Z issued pursuant to § 226.1(d)(3) and limited in its application to the facts outlined herein. I trust it is responsive to your inquiry.

Sincerely,

Jerauld C. Kluckman
Assistant Director.

[12 CFR Part 226, FC-0029]

§ 226.8(c), § 226.4(a) Statutory "base finance charge" and "service charge" may not be combined and disclosed as a single type of finance charge; it is proper to use the statutory terms as descriptions.

DECEMBER 6, 1976

This is in reply to your letter of ..., requesting an official staff interpretation of the requirements of recently amended § 226.8(c)(8) of Regulation Z with regard to retail installment sales contracts typically in use in the State of Ohio.

Ohio Revised Code § 1317.06, which regulates the finance charge in retail sales, provides for a "base finance charge" at the rate of $8 per $100 of principal per year and a "service charge" of 50 cents per month for the first $50 of principal and an additional 25 cents per month for each of the next five $50 units of principal. You point out that these two rates are defined in § 1317.01 O.R.C. as follows:

> "(N) 'Finance Charge' means the amount which the retail buyer pays or contracts to pay the retail seller for the privilege of paying the principal balance in installments over a period of time ...
>
> "(O) 'Service Charge' means the amount which the retail buyer pays or contracts to pay the retail seller for the privilege of paying the principal balance in installments over a period of time in addition to the finance charge for the same privilege."

You contend that the "service charge" is not a service charge in the true sense of the term, but rather is interest or a time price differential. You stressed in a telephone conversation with a member of this staff that it was essentially an accident of history that the finance charge was divided into two segments with different names. You argue that since the "base finance charge" and the "serice charge" are actually the same *type* of finance charge, there should be no itemization of the finance charge under § 226.8(c)(8)(i).

Staff's review of this matter does not lead it to concur with your contention that the base finance charge and the service charge are the same type of finance charge and therefore need not be itemized under § 226.8(c)(8)(i). The fact that the charges are dealt with separately in the Ohio statute and that they are computed in different manners is the basis for our differing view. Accordingly, it is staff's opinion that it would be proper to make the disclosure under § 226.8(c)(8)(i) by using the statutory terms of "base finance charge" and "service charge" to describe the two types of charges.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation, and I trust that it is responsive to your inquiry.

Sincerely,

Jerauld C. Kluckman
Assistant Director.

Regulation B
EQUAL CREDIT OPPORTUNITY
Official Staff Interpretations

(Note: These interpretations are issued under authority of § 706(e) of the Equal Credit Opportunity Act and § 202.13(c)(1) of Regulation B.)

§ 202.6 Furnishing of Credit Information

This is in response to your September 13 letter regarding the consequences of the Board's deferral of the effective date of section 202.6 of Regulation B (12 CFR 202) from November 1, 1976 to June 1, 1977. The Board's decission was announced on September 2 and notice of the action appeared in the *Federal Register* on September 13 (41 FR 38759). This is an official staff interpretation relating to § 202.6 of Regulation B, issued pursuant to §§ 202.13(b) and (c).

In your letter, you explain that your firm represents a large creditor that offers several open-end credit plans. Prior to the deferral of the effective date of § 202.6(b)(1)(ii), your client ordered the printing of the specified Credit History for Married Persons Notice and arranged with a data processing company to insert the notice in mailings to active accounts between November 1, 1976 and February 1, 1977. The notice contains a reference to November 1976, which renders it unusable between June 1 and October 1, 1977. You have asked whether your client may distribute these notices during the period November 1, 1976 through February 1, 1977 instead of during the period June 1 through October 1, 1977.

The answer to your inquiry is, yes. A creditor that has printed or ordered the printing of the notice specified in the previous version of § 202.6(b)(1)(ii) may mail or deliver that notice to all (or all married) holders of active accounts (for open-end accounts) or existing accounts (for closed-end accounts) between November 1, 1976 and February 1, 1977. This is not required, however, and a creditor may elect to postpone sending the notice or taking any other action regarding the furnishing of credit information under § 202.6 until June 1, 1977. The following comments apply only to those creditors that have had the notices printed or have ordered their printing and choose to distribute them between now and February 1, 1977.

Since the notice provided for in the previous version of § 202.6(b)(1)(ii) relates only to accounts established prior to November 1, if a creditor chooses to distribute copies of that notice now, the question arises concerning what action the creditor should take regarding new accounts that are established between November 1, 1976 and June 1, 1977. If a creditor provides the notice now, but does not record whether new accounts set up between November 1, 1976 and June 1, 1977 involve spouses who are both contractually liable or users, then, in June 1977, the creditor will have an information gap in its records. It will not be able to tell whether any of the accounts established between November and June involve contractually liable or user spouses and, therefore, will have to send notices to those account holders in order to obtain the necessary information to comply with § 202.6(b)(1).

To avoid having to provide any further notices, any creditor that has furnished or is in the process of furnishing credit history notices may elect to follow the designation procedures of § 202.6(a)(1) for each account established after November 1, 1976. If a creditor so elects, for each account established after that date, the creditor should determine whether the account is one that an applicant's spouse, if any, will be permitted to use or upon which both spouses will be contractually liable, if either of those types of accounts is offered by the creditor. If the account does involve a user spouse or if both spouses are contractually liable on the account, then the creditor should designate the account to reflect the fact of participation of both spouses; that is, the creditor should indicate on its records the names of both spouses and the fact of their joint participation, which entitles them to share the credit history relating to the account.

Two further questions arise if credit history notices are sent out between November 1, 1976 and February 1, 1977: (1) how to handle requests to change the manner of reporting credit history information relating to an account; and (2) how to furnish credit information relating to appropriately designated accounts.

Addressing the first question, if, after November 1, 1976, a creditor receives a properly completed request to change the manner in which credit information is furnished regarding a joint or user account, then, within 90 days after receipt of that request, the creditor should designate the account to reflect the participation of both spouses as provided in § 202.6(b)(2).

Regarding the second question, once an account has been appropriately designated, either as a new account pursuant to § 202.6(a)(1) or by virtue of a change request pursuant to § 2026.(b)(2), a creditor has an option regarding the manner of reporting credit information relating to that account prior to June 1, 1977. A creditor may immediately begin reporting the information as provided in §§ 202.6(a)(2) and (b)(2), or a creditor may continue to furnish the information in the same format as it has in the past, deferring compliance with the reporting requirements of § 202.6 until June 1, 1977.

The following two examples illustrate the operation of the interpretations set forth in this letter. Assume that a person established an open-end credit card account in 1975 and that the person's spouse is authorized to use the account, but the creditor's records do not reflect the spouse's use. If the creditor sends a Credit History for Married Persons Notice to the account holder by February 1, 1977, it will have complied with § 202.6(b)(1)(ii) and need not send another notice relating to that account between June 1 and October 1, 1977. If the account holder or the spouse submits a properly completed request to change the manner of reporting credit information relating to the account, then the creditor within 90 days after receipt of the request, should indicate on its records the names of both parties and the fact that they want credit information relating to the account furnished in both their names. The creditor then has the option of either immediately beginning to report the information in both names or waiting until June 1, 1977 to do so.

The second example assumes that a creditor has sent the notice and a person establishes an open-end credit card account on December 1, 1976 under which the person's spouse will be permitted to use the account. In that situation, the creditor should indicate the names and involvement of both spouses on its records at the time that the account is established. Once that has been done, then, as in the previous example, the creditor has the choice until June 1, 1977 of either reporting credit information relating to the account in the name of each spouse or continuing to report that information as it does presently.

Again, the procedures set forth in this letter are voluntary, but any creditor that follows all of the outlined steps will be deemed to have complied fully with the requirements of the amended version of § 202.6(b)(1) as of June 1, 1977. Thereafter, such a creditor will only have to comply prospectively with the designation and reporting requirements of § 202.6(a) and (b)(2).

We trust that this interpretation clarifies your client's responsibilities under § 202.6 and answers your questions. If we can be of further assistance, please let us know.

Sincerely,

Janet Hart,
Director.

Federal Register, November 8, 1976, p. 49087

The following two examples illustrate the operation of the interpretations set forth in this letter. Assume that a person established an open-end credit card account in 1975 and that the person's spouse is authorized to use the account, but the creditor's records do not reflect the spouse's use. If the creditor sends a Credit History for Married Persons Notice to the account holder by February 1, 1977, it will have complied with § 202.6(b)(1)(ii) and need not send another notice relating to that account between June 1 and October 1, 1977. If the account holder or the spouse submits a properly completed request to change the manner of reporting credit information relating to the account, then the creditor within 90 days after receipt of the request, should indicate on its records the names of both parties and the fact that they want credit information relating to the account furnished in both their names. The creditor then has the option of either immediately beginning to report the information in both names or waiting until June 1, 1977 to do so.

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We trust that this interpretation clarifies your client's responsibilities under § 202.6 and answers your questions. If we can be of further assistance, please let us know.

Sincerely,

Janet Hart,
Director.

Federal Register, November 8, 1976, p. 49087

Sec. 202.001. Modification of Equal Credit Opportunity Act Notice pursuant to State law. (a) Section 202.4(d)(1) requires creditors to provide applicants with a notice explaining the Act's general rule prohibiting discrimination in credit on the basis of sex or marital status. This notice contains a specific reference to the "Federal Equal Credit Opportunity Act" and to the "Federal agency" responsible for enforcing the Act.

(b) Certain States have adopted, or intend to adopt, statutes prohibiting discrimination in credit that are similar to the Federal law. In some cases, State law or regulation requires that creditors provide applicants with a notice regarding a State Equal Credit law. The Board has been asked whether the statement prescribed by section 202.4(d)(1) may be modified to include a reference to a State law and enforcement agency immediately following the reference to the Federal law and agency.

(c) In these circumstances, a creditor may add to or modify the notice prescribed in section 202.4(d)(1) to refer to the relevant State law and/or to provide the name and address of the appropriate State enforcement agency. This modification may take the following form:

The Federal Equal Credit Opportunity Act and the (insert the name of the State law) prohibit creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal agency which administers compliance with the Federal Act concerning this (insert appropriate description—bank, store, etc.,) is (name and address of the appropriate Federal agency). The State agency which administers compliance with the State law is (insert name of the State agency).

[Board Interpretation, March 22, 1976; Interprets and applies 12 C.F.R. 202.4(d)]

Sec. 202.701. Obtaining the signature of a spouse prior to January 31, 1976. Section 202.7(a) of this Part which becomes effective on January 31, 1976, provides, with certain exceptions not applicable to the present question, that

"... a creditor may not require the signature of a spouse or other person on a credit instrument unless such a requirement is imposed without regard to sex or marital status on all similarly qualified applicants who apply for a similar type and amount of credit."

Regulations of certain States require that the signature of both spouses be obtained in connection with credit guaranteed under student loan programs administered by the Department of Health, Education and Welfare. It appears that it may not be possible effectively to amend these regulations in order to eliminate this requirement until the end of January, 1976. Therefore, a question has arisen whether creditors extending credit in connection with such programs may continue until January 31, 1976 to obtain the signatures of both spouses upon instruments connected with the loan.

In deferring the effective date of section 202.7(a), the Board of Governors explained that it had done so because public comment on the regulations as proposed for comment on September 10, 1975 (40 FR 42030) "stated that creditors would need a few months to adapt their application procedures and re-train their employees as to the situations in which a creditor may request or require the signature of a spouse or other person." Accordingly, in extending credit prior to January 31, 1976, in connection with student loan programs administered by the Department of Health, Education and Welfare a creditor may continue to require the signature of both spouses upon instruments connected with the loan.

[Federal Reserve Board Interpretation, December 22, 1975; Interprets and applies 12 C.F.R. § 202.7]

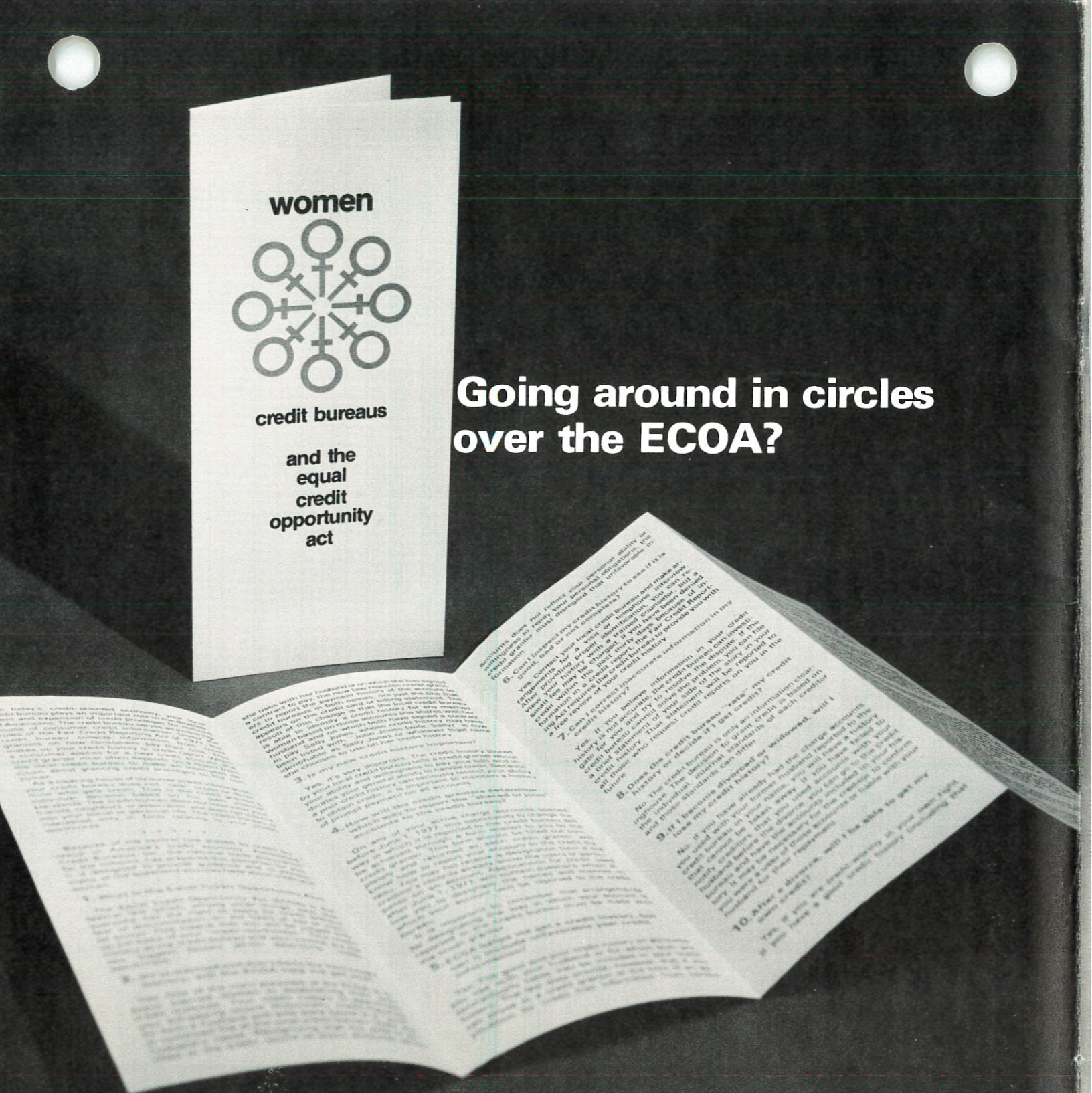
July/August 1977

Atch. C2

Management

Associated Credit Bureaus, Inc.

PERSONNEL PERSPECTIVES



Going around in circles over the ECOA?

Here's help in getting the Act together. Twenty-four of the most asked questions about the Equal Credit Opportunity Act are answered succinctly in this bright colored pamphlet for women.

ACB worked with major credit granters, consumer groups and government officials in compiling this brochure which also weaves in many consumer rights under the Fair Credit Reporting Act.

Extensive national publicity has surrounded the implementation of the section of the ECOA which provides for the designation of a spouse as a credit account user. As a result, ACB members should be prepared for a probable increase in consumer interviews. Unlike other pamphlets on this subject, the new ACB pamphlet emphasizes the importance of a credit history for married women and the credit bureau's role in maintaining it. To order your supply of "Women, Credit Bureaus and the Equal Credit Opportunity Act" fill out the enclosed tip-in card and mail it today.

July/August 1977

Management

Associated Credit Bureaus, Inc.

Volume 25, No. 4

Contents

The Cover: Careful attention to personnel has never been more important. Hiring the right people in the first place requires careful interviewing, along with familiarity with federal law. Proper training pays off in many ways. And, work hours often can be rearranged to benefit both employers and employees. Please see page four.

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Joan D. Masterson, Manager of Publications

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Probing the Privacy Commission's report . . .

WHAT PRICE PRIVACY?

by John L. Spafford
ACB President
Houston, Texas

Starting with the Nader campaign against the Corvair in the sixties, we have seen the "consumerism" movement spread across America and receive increasing attention from the news media and lawmakers at every level. Just as the movement has grown, it has also diversified. The development that should concern us most is the issue of privacy.

The first legislative effort dealing specifically with the privacy issue was the passage in 1974 of a federal privacy bill relating to federal agencies. Shortly, we will see the beginning of the second phase of legislative action. The Privacy Protection Study Commission has completed its work and the Congress will soon begin to consider its recommendations for legislation in the private sector.

Relative to the consumer credit industry, there is a basic five-part philosophy that structures the Commission's recommendations. Those parts are: 1) that an individual has the right to know who is maintaining records about him; 2) that he has the right to know, in advance of any credit relationship, what types of information will be collected about him and how it will be used; 3) that the consumer deserves an expectation of confidentiality and accuracy concerning his recorded information; 4) that he should have the right to see and copy any information maintained about

him; and 5) that an individual is deemed to have a continuing interest in recorded information and should be party to any new uses of that information.

Certainly, few of us could have any basic philosophical objection to most of these points as stated. All are generally reasonable and some form the basis of current practices by many credit bureaus and creditors. The same may be said for many of the Privacy Commission's specific consumer credit recommendations.

We should be concerned, however, with the application of these principles and recommendations to the realities of our credit economy. For the suggested program of the Privacy Commission to remain reasonable and workable as government policy many things must be taken into consideration and appropriate modifications made.

"Broad Brush" Dangers

The current recommendations take a "broad brush" approach to many situations and are equally lacking in any clear-cut definition in terms of what they are seeking to accomplish. In our credit economy a "broad brush, no definition" approach is impractical because of the confusion that would result and the obvious invitation to litigation. Improvement in the report can also be made in considering the extent to which voluntary action by the consumer credit industry can correct any situations of concern. Currently, the only significant move in this direction is found in the Commission's recommendations on mailing lists.

Disclosure Concerns

We should also be concerned by the extensive disclosure requirements recommended by the Privacy Commission. Not only do they offer the potential for being as complicated and as much an inducement to litigation as Truth in Lending, but there is serious concern about who should disclose what. The requirement that creditors disclose complete credit reports in an adverse credit decision situation is potentially the most serious problem. Most creditors are not prepared either to completely interpret a report or to assist the consumer in exercising his Fair Credit Reporting Act rights. As required by law, credit bureaus can and do perform this task. As we all recognize, any other method of report disclosure can cause significant problems.

The Commission's recommendations that the federal government inject itself into deciding what factors are relevant in a credit-granting decision, and that credit-granting criteria be disclosed to the consumer are equally questionable and certainly pose severe problems for the credit granting community.

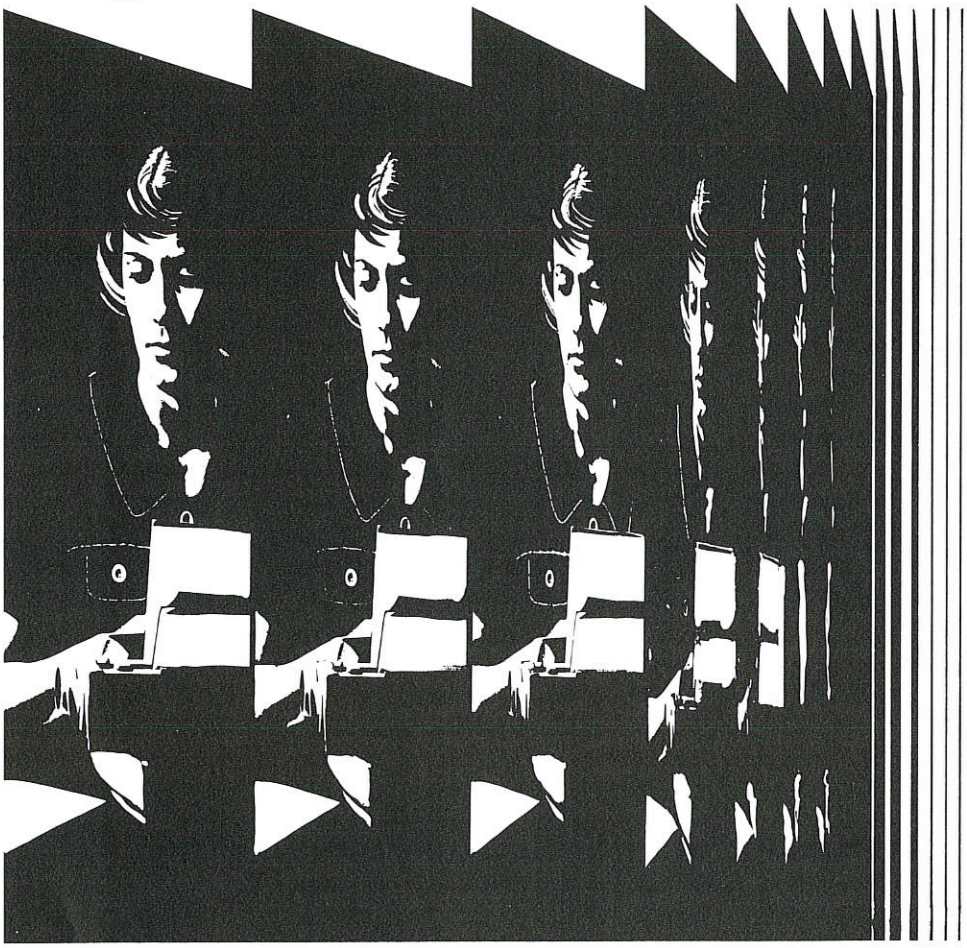
Because of these problem areas and the fact that the Commission has gone beyond its mandate by delving into areas of discrimination and credit practices, we should approach the legislative phase of the privacy issue with caution.

We must be cautious because the report of the Privacy Commission, if enacted directly into law, has the potential for radically altering the way in which our credit economy functions. Couple this with the Congressional and state legislative tendency to go "all out" in drafting legislation and we may face a very critical situation in future years.

Legislation Inevitable

Because of this it is important that we recognize and accept the fact that there will be privacy legislation introduced directed at the business community, some of which will certainly pass. Therefore, we must adopt a reasonable and responsible posture, and support the good portions of the Privacy Commission's recommendations. It is equally important for us to work diligently to modify those recommendations that would injure the credit system of this country. Finally, we must continue to work hard for fair and equitable laws that put a premium on responsible, voluntary action by the business community with a minimum of regulatory interference.

PERSONNEL PERSPECTIVES



Hiring . . . what you can and can't ask

Training . . . what, how and why

Hours . . . would flexitime work for you?

Since personnel represents the credit reporting and collection service industries' biggest single cost of doing business, this area requires regular evaluation. Ask yourself these questions:

Are your hiring procedures thorough enough to gain the best possible employees and to achieve maximum file security goals?

Are your training programs thorough? Do they stress why certain things are done, as well as what and how?

Are you experimenting with different work-hour arrangements for greater efficiency and savings?

With the minimum wage going up, focus on personnel

selection, training and efficient use of time has never been more important. The following articles explore these areas.

Hiring

Although there are a number of restrictions on what can be asked on an employment application and in an interview, thoroughness in what *can* be asked is essential. In fact, careful screening and indoctrination of employees are required in the newly adopted "Credit Reporting Industry Security Standards."

The most important areas to explore are an applicant's job experience and his or her suitability for the present position. The applicant should be encouraged to do the talking and questions that can be answered with "yes" and "no" should be avoided. Helpful questions on job experience include the following:

1. What did you do on your last job and how did you like your work?
2. Tell me something about your working relationship with your supervisor.
3. You know we will need to talk to your former employers to check your references. You don't have any objections, do you?
4. In your application, you aren't too clear about why you left your last job. How about telling me some of the reasons.
5. How did you find the working atmosphere at your last place of employment?
6. In what accomplishments on your last job did you take the most pride?
7. Did your former supervisor encourage suggestions or ideas for improvements? Tell me about any suggestions that you made on your own.
8. Discuss your relationship with your associates.
9. For what kind of company do you think you can do your best work?
10. Did you ever become involved in emergency situations and work long hours under pressure? Tell me about such an experience.

Suitability for the available position can be judged by asking questions such as the following:

1. I have explained the duties of our job. How do you think your experience fits you for it?
2. Can you tell me about your satisfaction or lack of satisfaction with the rate of advancement at your former company?
3. Suppose you are offered this job and take it. What are your immediate goals?
4. What do you think are your strong points? How do you think they will help you in this job?
5. Do you have any weak spots in your work habits? If so, what are you doing to overcome them?
6. Have you taken any courses or home study programs relating to your field of work? Tell me about them.

TESTING

The federal Equal Employment Opportunity guidelines concerning testing involve the basic rule that if particular tests have an adverse impact on hiring of particular groups (i.e. racial minorities), the employer has the burden of showing that the test is a valid indication of job performance. For this reason, personality tests should be avoided. Rather, concentrate on skills tests that pertain to the job. If other tests are being used, a trained psychologist should be consulted.

WHAT YOU CAN AND CAN'T ASK

Unless you're aware of the rules to prevent discrimination in the hiring of minority-group members, women, older people, the handicapped, and others, you could break the law and risk an expensive conciliation proceeding or lawsuit. And, moreover, you might have to pay thousands of dollars in back pay to a rejected job applicant.

To prevent such problems from arising, anyone who has any contact with a job applicant should read through the table that follows. It summarizes the types of information you may seek from job seekers and what you may require of them before and after they start work.

Note: Employment application forms are available from ACB. Contact the Member Services Department for information.

Subject	Acceptable pre-employment inquiries or statements	Unacceptable pre-employment inquiries or statements
Name	"Have you worked here under a different name?" "Have you ever been convicted of a crime under another name?"	To an applicant whose name has been changed by court order or otherwise: "What's your former name?"
Residence	"What's your place of residence?" "What were your previous residences in the United States? How long were you at each?" "How long have you been a resident of this state or city?"	"How long have you lived in the United States?" "Do you own or rent your residence?"
Birthplace	"Can you, after being hired, submit a birth certificate or other proof of United States citizenship or age?"	"What's your birthplace?" "What's the birthplace of your spouse, parents, or other relatives?" "You must submit a birth certificate, naturalization certificate, or baptismal record prior to employment."
Age	"Are you over 18 years of age?" To an applicant under 18: "Can you, after employment, submit a work permit?" "If hired, can you furnish proof of age?" or "Hiring you depends on verifying that your age meets legal requirements."	"What's your age?" "What is your birth date?" — or any questions tending to identify applicants 40 to 64 years old.
Religion	None	"What's your religious denomination, affiliation, church, or parish?" "Who's your pastor?" "Which religious holidays do you observe?" "Do you attend religious services or a house of worship?" "This is a Catholic/Protestant/Jewish/atheist organization."
Workdays and shifts	"You'll have to work certain days, hours, or shifts."	
Race or color	"Do you have any distinguishing characteristics, such as a scar?"	On the telephone: "What's your skin color or complexion?" — or any questions directly or indirectly indicating race or color.
Photographs	"You may be required to submit a photograph after you're hired."	"You must attach a photograph to your application form." "You may attach a photograph to your application form if you wish." "You must submit a photograph after you're interviewed but before you're hired."
Citizenship	"If you're not a United States citizen, have you the legal right to remain permanently in the United States?" "Do you intend to remain permanently in the United States?" "If you're hired, you may be required to submit proof of citizenship."	"Are you a United States citizen?" "Are you or your spouse or your parents native-born United States citizens?" "When did you or your spouse or your parents acquire United States citizenship?" "You must show your naturalization papers or first papers."

Subject	Acceptable pre-employment inquiries or statements	Unacceptable pre-employment inquiries or statements
National origin or ancestry	"Which language do you speak, read, or write fluently?"	"What's your nationality, lineage, ancestry, national origin, descent, or parentage?" "When and where did you arrive in the United States?" "How long have you been a United States resident?" "What's the nationality of your spouse or parents?" "What's the maiden name of your wife or mother?" "What is your mother tongue?" "Which language do you commonly speak?" "How did you learn to speak, read, or write a foreign language?"
Education	"Describe your academic, vocational, or professional education." "Which schools have you attended?"	"When did you last attend high school?"
Experience	"What's your work experience?" "What's your military experience in the armed forces of the United States?" "In a state militia?" "In a branch of the United States armed forces?"	"What's your military experience?" "What kind of military discharge did you receive?"
Character	"Have you ever been convicted of any crime?" "When?" "Where?" "What was the disposition of the case?"	"Have you ever been arrested?"
Relatives	"Give the names of relatives already employed by this organization." To an applicant who is a minor: "Give the name and address of a parent or guardian."	"What is your marital status?" "Number of dependents?" "Age of dependents?" "Who will care for the children?" "Where does your spouse (or parents) work?" To an adult applicant: "Give the names and addresses of your spouse, children, or a relative." "With whom do you reside?" "Do you live with your parents?"
Emergency notice	"Give the name and address of a person to be notified in case of accident or emergency."	"Give the name and address of a relative to be notified in case of accident or emergency."
Organizations	"List organizations, clubs, professional societies, or other associations of which you're a member, excluding any which indicate the race, religious creed, color, national origin, or ancestry of its members."	"List all organizations, clubs, societies, and lodges to which you belong."
References	"Who referred you to us for a position?"	"Give us a religious reference."
Physical condition	"Do you have any physical condition that may limit your ability to perform the job you're applying for?" "We'll hire you if you can pass a physical examination."	"Do you have any physical disabilities?" "Describe your general medical condition." "Do you receive workmen's compensation?"
Miscellaneous	"Any misstatements or omissions of material facts on your application may be cause for dismissal."	"Have you ever had your wages garnished?" Any inquiry that is not job-related or necessary for determining an applicant's eligibility.

PERSONNEL PERSPECTIVES

Training

by Robert D. Sabo
Vice President
Credit Bureau of Greater Houston
Houston, Tex.

Whether or not we like change, we all recognize the simple truth that change is inevitable and a necessary part of living and growing.

The credit reporting industry is an excellent example of a living, growing industry in which many significant changes have occurred, particularly within the past ten years. The changes during this period probably have been more revolutionary than any which occurred in the thirty or forty years prior to 1966.

We have witnessed changes in the way we report information as evidenced first by the Common Language and now by Crediscope. We have seen changes in what we can and cannot report as outlined by the Fair Credit Reporting Act which is presently being joined by the Equal Credit Opportunity Act. We have experienced the change from reports done completely on a manual basis to an environment in which computers and automation play an increasingly greater role.

Economic, social and technological factors interact to create new situations from which new concepts emerge, that shape to a great extent what we do and how we do it. The fact that this is an ongoing process, in which change is the norm, means that we must become sensitive to more than the simple "what" and "how" of our business of consumer credit reporting.

I believe it is vital that we begin to place more emphasis on "why" in all explanations relating to the "what" and "how", especially when we are preparing training materials, actually training operating personnel to handle bureau functions, and in any communications with the news media or in talks to groups in the community.

I have maintained, for some time now, that the "bare bones" operating procedures which almost all bureaus write into their training manuals do not fully cover everything involved in a given function because they relate only to what is required to make something happen. There is not, as I see it, enough said about how to make something happen *well,* or *why* it is important that a given job be done completely, accurately and neatly. Such a lack of information can lead to confusion in an environment which brings so many changes to us. Knowing the reason for the changes should help us all handle them better.

The "Why's" of ECOA

A simple example might involve a situation covered by the ECOA.

We could tell our reporters simply that when an inquiry is received for an individual account in a woman's name they should search for and read whatever information we have in the woman's name plus any joint accounts in which she may share.

This is usually about as much as most procedures cover, and many of these may not be written. In a real situation, with procedures this brief, it is conceivable that a reporter might find *nothing* at all in the woman's name. It is also conceivable that, not knowing better, the reporter might feel that *something* should be reported and proceed to locate and read the record of the woman's husband just so the credit granter will have something to use in making a decision. At this point, someone might get into trouble.

Wouldn't it be better to add

to the basic procedure something to the effect that "in this specific case, the record of the woman's husband may not be read because, first, it violates the Fair Credit Reporting Act since the husband is not applying, and secondly, whether the credit granter uses the information or not, it violates the intent of the ECOA that decisions relating to the woman's application be made on the basis of what she actually has in her name".

More could be said about the "why", obviously, but enough has been added to alert the reporter that there are at least two good reasons why he/she should not go beyond the basic procedure and give more than was requested.

Put It in Writing

Perhaps we assume too much. Perhaps we believe that the need for completeness and accuracy, for example, is self-evident and there is no need to write down that there *is* a need for these things. Perhaps we explain verbally that this should be done "because . . . " and believe this will be understood and remembered by our operating people. Whatever the reason, it is imperative that we stop writing operating procedures like telegrams and begin to put more flesh on the procedural bones by including in written procedures more information on why it is important that a job be done completely and well and what the problems or consequences are if it is not done properly.

Another example related to ECOA might be a case in which the procedures state that "when a joint account is requested, the reporter should read whatever individual accounts we may have in both names, joint accounts and undesignated accounts". On the surface this appears to be enough said about the actual procedure in this situation. The *purpose* of the procedure might be greatly enhanced, however, by the addition of a little information relating to why this is important. The reporter may be motivated to find and report, no matter how stored, all available information in this situation if told that "failure to report *all* information in such cases may have a material effect on the decision to grant credit or not and could cause a wrong decision to be made. This could lead, at least, to inconvenience, or, at worst, to legal action." This is, as mentioned earlier, simple and obvious but it adds a greater sense of importance to a procedure which, in truth, *is* important.

Valuable Documentation

Please note that I am referring to written procedures. Written procedures are used as training devices during the training of new people; they are used again during refresher courses given experienced employees; and, perhaps more important than any of these, *they provide documentation of the fact that the bureau does, in fact, have in written form the "reasonable procedures" which are such an important part of doing business today.* To me, "reasonable procedures" implies that, as a simple example, we do more than tell our reporters to identify a record and read it to the inquiring credit granter. We must tell them to *positively* identify the *correct* record and read the *entire record,* every single word of it, to *a valid* inquiring credit granter and provide some explanation as to why this whole statement is important.

The operating procedures taught to employees, for every job in a bureau, should encompass the important aspects of each job, including the ramifications of doing it incorrectly, so the bureau, if ever challenged by any government agency or if involved in court actions, can produce the information used to train operating personnel. If these procedures are complete enough, there can be little question relating to reasonable procedure.

A Step Further

By doing what I have discussed, *and perhaps going a step further and issuing training certificates or having an employee sign a form stating he or she has been trained in and understands bureau procedures and philosophy,* no bureau can be faulted for not having *complete* procedures that would meet any test of reasonableness.

All credit bureaus have policies relating to their reporting operations and all bureaus have a business philosophy or ethic under which they operate. I advocate the idea of weaving these policies and philosophies into the actual procedures used and getting them in written form for the world to see, if need be, to prove that the practices of a bureau are a composite of everything that will make the end result of any service we render beneficial to everyone involved.

PERSONNEL PERSPECTIVES

Hours

Flexible work-hour schedules which allow employees to arrive and leave at times of their own choosing — or "flexitime", as it has come to be called — seems to be emerging as the fastest-growing and perhaps most useful system for many office workers, according to *Dun's Review.*

Flexitime was born in Europe more than a decade ago and transmitted to the U.S. largely through European-based companies with American branches. While still in its infancy here, flexitime has been adopted by scores of companies, including Metropolitan Life Insurance, Scott Paper, Sun Oil, Bristol-Myers and a number of banks. Even huge General Motors Corporation has placed several thousand workers on flexitime.

Although the patterns at individual companies vary, flexitime is basically a simple plan. Typically, a company on flexitime opens its door at 7 a.m. and closes them at 6 p.m. All employees must be present during certain predetermined core hours — say, 10 a.m. until 3 p.m. Beyond that, they determine for themselves when to arrive and leave in order to put in their daily required hours of work. Most companies require that employees maintain a similar schedule from day to day, or at least inform their supervisors beforehand of changes. But, some companies tolerate erratic patterns in which employees can work nine or ten hours one day and six or seven the next. A few even allow them to accumulate, say, 44 hours one week and work 36 hours the next.

Flexitime differs significantly from staggered hours, a system in which the employer dictates the times.

Flexitime is gaining momentum, while still another alternative, the four-day week, seems to be stalled. There are now around 750,000 workers putting in 35 hours or more in a four-day week, according to the U.S. Labor Department. Probably less than half that many so far are working on flexitime. But, the four-day week is not winning adherents as fast as was once anticipated. It has produced some troublesome side effects, such as worker fatigue, and is meeting resistance from the increasing number of women in the labor force who find that ten-hour work days keep them away from home too long. The four-day week attempts to separate work life from personal life as much as possible, while flexitime tries to integrate the two.

Advantages for All

For employees, the advantages of flexitime are clear and immediate. They can schedule their arrivals and departures to avoid traffic jams and accommodate their personal lives. And, because their individual circumstances and preferences have been recognized and respected, they tend to feel better about their jobs and are consequently more conscientious.

From management's point of view, there are several gains. Lateness virtually disappears as a problem, since a tardy worker usually can simply make up for lost time at the end of the day. Similarly, absences decline, especially those single-day absences by an employee who decides that since he or she is going to be late anyhow, why not call in sick. A working mother, for example, may have been up most of the night with a sick child. If she were working for a company that demanded she be in the office at 8 a.m., she might simply not show up. She would be less inclined to take the day off,

however, if she could sleep later and be there at 10.

Another advantage companies have noted with flexitime is that telephones are manned for more hours during the day, a significant asset in such service companies as banks and insurance firms. Also, although the results are harder to qualify, work seems to proceed more efficiently. Employees are inclined to stay until the job at hand is done, whereas work tends to be dropped at the moment of closing under the fixed schedule.

Understandably, companies are somewhat apprehensive at first about how flexitime will work. They envision a chaos in which employees will arrive and leave at uncertain times, leaving management only guessing at how much of the work force and which part of it is on the job at any particular moment.

In practice, however, the movements of the work force and even the comings and goings of individuals have turned out to be reasonably predictable. For example, at SmithKline Corporation, which has been taking precise measurements of the impact of flexible hours on its operations, about two-thirds of the work force regularly arrives between 8:30 and 9 a.m. The rest come in at times more or less evenly distributed throughout the permitted arrival period, 7 to 9:30 a.m., with less than two percent arriving at the last minute. In the afternoon, about 62 percent routinely leave between 4:15 and 5:15, except on Friday, when, not surprisingly, many employees cash in on the extra hours they have accumulated and "flex out" early.

Monitoring the System

Another management anxiety is that some employees will exploit the system by arriving late and leaving early. To cope with cheaters, there are now several electronic devices designed specifically to keep track of workers on flexitime. Many companies that have shifted to flexitime, however, have not found it necessary to oversee the operation with elaborate devices. At Metropolitan Life Insurance Company headquarters in New York City, where a big office force of 11,000 employees has been working on flexitime schedules for two years, management monitors the system with nothing more sophisticated than simple sign-in and sign-out sheets. Cheating, says Metropolitan, is negligible.

Interestingly, much of the initial resistance to flexible hours comes not so much from top management as from first-line supervisors, many of whom fear that the burden of implementing it will fall most heavily on them. Some supervisors feel threatened by the loss of what has always been a principal criterion for judging subordinates: punctuality in reporting for work. Some understandably worry that they will have to arrive at 7 a.m. and stay until 6 p.m. to make sure that the work gets done. What supervisors have generally found, however, is that work gets done even when they are not there so that they can go on flexible schedules themselves.

For example, some months after Scott Paper Company put a flexible work schedule into effect, it sent out questionnaires to 194 supervisors asking for their evaluation. In their answers, 139 of the supervisors reported that efficiency in their departments had not suffered, and 48 thought efficiency had improved; only seven thought it had decreased. By an overwhelming majority of 187 to 7, they voted to continue the system.

Flexitime has at least one serious limitation. It does not serve well for work units that are continually interdependent, such as an assembly line.

Proponents maintain, nonetheless, that of the several alternate work styles that have emerged in the 1970's, flexitime will prove not only the most durable but the one most applicable to the largest number of situations. One survey indicates that as many as half the companies experimenting with a four-day week ultimately revert to a traditional five-day schedule. Although no comparable study has been conducted for flexitime, the fragmentary evidence so far indicates that once a company has switched to flexitime, it rarely returns to fixed hours.

The Equal Credit Opportunity Act:

A COST/BENEFIT ANALYSIS

by James F. Smith, Director
Econometric Research
Sears, Roebuck and Company
Chicago, Ill.

Editor's note: The following article is excerpted from Dr. Smith's presentation at the ACB Mid-Year Management Forum. Dr. Smith was on loan for a year and a half as a Senior Economist in the Mortgage and Consumer Finance Section of the Division of Research and Statistics of the Board of Governors of the Federal Reserve System. This analysis was conducted by Dr. Smith at that time. However, it does not indicate concurrence by the Board of Governors, other members of its staff or the Federal Reserve Banks.

When the Board of Governors of the Federal Reserve System was assigned rulemaking authority under the Equal Credit Opportunity Act, it became faced with the task of attempting to write law in a totally uncharted area. The Act itself essentially has only one requirement. Its purpose is "to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all creditworthy customers without regard to sex or marital status." Surely, this purpose represents a social equity which all persons can support. It's simple, straightforward and easily stated. But, the FRB's final Regulation B contains a great many other requirements.

This discussion is intended to analyze the benefits and costs

to society from the implementation of the Act. No criticism of the purpose of the Act is intended or implied.

The analysis does not cover the changes to the Act embodied in the ECOA Amendments of 1976, since the Board published final regulations implementing that Act on December 29, 1976 and they didn't become effective until March 23, 1977.

BENEFITS

No empirical evidence of the existence of discriminatory credit practices, their extent or the cost to the persons affected by such practices was ever present as evidence in hearings held by the National Commission on Consumer Finance or Congress. This remained true in testimony taken by the FRB at hearings and in written comments.

Nevertheless, the evidence offered concerning discriminatory experience was of sufficient volume to conclude that at least some creditors had engaged in social, rather than economic, discrimination. Experience related suggests that such discrimination manifested itself in two forms:

1. Women or divorced, separated, single or widowed individuals may have been denied credit or obliged to obtain credit at a higher cost than warranted by their economic circumstances.

2. Such persons may have been subjected to demeaning requirements or restrictions when they did obtain credit, such as being forced to have a co-signer or being unable to get credit in their own name.

However, it is very difficult to quantify the dollar and cents benefits — as distinguished from other important personal social benefits — from eliminating the first kind of discrimination and impossible to quantify benefits flowing from eliminating the second kind. The benefits from eliminating the first type of discrimination could be partially measured either by surveying consumers and inquiring as to whether they had ever encountered this type of problem, and, if so, how it had been resolved or by surveying creditors in a given area to see if the same person had applied for credit at several different places, getting rejected by one or more and accepted at another institution.

The strictly economic com-

petitive aspects of the consumer finance market argue against this sort of discrimination being widespread. Nevertheless, markets and competition in them are not always perfect, and myths and unsupported beliefs about what constitutes creditworthiness can be widespread and powerful.

Although the economic benefits from the Act and Regulation B may be small, the non-economic benefits might nevertheless be of considerable social importance to American society.

If, in fact, there has been significant discrimination against women in granting credit, it is possible that the main cost may have been in lost sales and lost credit accounts. In that case, the main economic benefit of the Act and Regulation B may be to consumers from increasing the utility that would come from the added transactions. Additional benefits would flow to merchants and creditors from doing more business.

Many provisions give rise to benefits with little, if any, attendant costs. The main purpose of the Act has no particular cost implications. Similarly, provisions that prevent creditors from discouraging applicants on the basis of sex or marital status, allow women to open separate accounts, prevent creditors from discounting the household income of two-earner families or inquiring about plans for bearing or raising children seem to provide clear benefits and no measurable costs.

COSTS

In speaking of the costs of consumer credit protection it must be remembered that in cases where the cost of granting credit is raised, it will in whole or part generally be passed on to the consumer. This point should be made to your friends, associates, legislators and the news media. However, it is important to both the creditor and the consumer to implement the law at as low a cost as possible consistent with the objectives of the legislation.

It should also be noted that Regulation B was not the only regulatory change that creditors have had to deal with recently. In the last 28 months, the Congress has passed nine laws dealing with consumer credit. Also, state legislatures have not been sitting idle. This makes it difficult to be sure you're in compliance with everything.

Although each time the Board published a new version of Regulation B the costs were reduced, many sections do give rise to measurable costs.

The cost of complying with Regulation B has both recurring and non-recurring components. The non-recurring costs include:

1. Fees from legal counsel to interpret the regulation, approve new forms, and review various aspects of the regulation with the creditor.

2. Training costs to inform employees about the regulation and its implications for operating procedures.

3. Costs for destroying old forms that can no longer be used.

4. Reprogramming to change computer systems to comply with the new regulations.

This brings to mind a personal experience I had recently. A wise old banker in a small town in Colorado said to me, "You know, Jim, I've been running this bank since 1928, and I've seen lots of changes. I've paid interest on demand deposits . . . and I've stopped paying interest. And, I've had to start charging for various things. I've always tried to treat my fellow neighbors fairly and decently, but I've had a terrible time with these regulations. For several years, I've just kept an old adding machine tape . . . and every time I have to go to my attorney to review a change in my forms or to my printer to reprint them, I record the costs. And, I explain to loan customers that I'm going to have to charge them two percent more than I would like to . . . but that's my overhead for covering various consumer protections. If I don't do this, I go out of business."

I was really struck by his wisdom in trying to get over to his own customer base what the problems are. And, I think you can see an increased understanding in Washington that small creditors have different problems from large creditors.

There are more than 490 million individual credit accounts

Non-recurring Costs of Section 202.10 by Creditor Group

	(millions $)		
Creditor	Printing & Mailing Notice	Changing Systems & Handling Response	Totals
Commercial Banks	$15.4	$13.2	$28.6
Credit Unions	7.1	3.3	10.4
Finance Companies	11.9	2.4	14.3
Oil Cos. and Other Credit Card Issuers	2.2	12.5	14.7
Retailers	10.9	24.5	35.4
S&L's, MB's, & MSB's	1.0	5.5	6.5
	$48.5	$61.4	$109.9

in America today and more than 200 million annual applications for credit. There are approximately 57 million credit rejections and 157 million approvals. These figures are the basis for estimating costs of various regulations.

Legal fees are estimated to be $2.4 million for commercial banks. This estimate is based on a special survey conducted by the Consumer Bankers Association in August, 1976, covering 44 banks with $13, - $625 million outstanding in consumer loans. Legal fees for other creditors were not computed, since there was no evidence on which such an analysis could be based.

Training costs, estimated at $7.6 million, were arrived at by using the above figures and testimony to the Board. These costs arise from training employees in how to use new application forms, new credit scoring systems (if applicable), and new customer relations procedures for accounts notifying the creditor of a change of name or marital status. They also arise from the necessity of explaining the new forms and procedures to dealers from whom a creditor buys paper or to merchants who solicit customers or hand out application forms for banks or other third-party credit card issuers.

Creditors have been required to redesign their application and account record forms considerably, but to reduce the potential costs of destroying old forms, the Board delayed the effective date of this provision eight months. However, all of the banks in the sample checked by the Federal Reserve Bank of Philadelphia and 86.4 percent of the banks reporting in the Consumer Bankers Association survey reported costs from insuring that obsolete forms were destroyed. Testimony presented at the Board's August, 1976, hearings on ECOA amendments indicated that retailers also had incurred significant costs to remove and destroy obsolete forms. Particularly affected by this cost were creditors with a large number of branches or outlets, creditors with a large dealer network from which they purchase paper or third-party credit card issuers.

Given the potential of a $10,000 penalty for each individual violation of Regulation B, creditors were apparently quite assiduous in insuring that obsolete forms were destroyed. The costs totaled $11.9 million — a figure I find to be somewhat mind-boggling. I really didn't realize (nor did the Board) that people kept more than an eight-months supply of forms lying around.

In addition, the Philadelphia Federal Reserve Bank's cost analysis of the banks indicated that the cost of sending a person to a store to get all of the Bank-Americard, Master Charge and other forms is around $50. This also applies to oil companies removing forms from all of their filling stations and for Sears to pull them off of every cash register.

The most costly provision of Regulation B is the dual name reporting requirement. And, there are a number of interesting things to note in this area. First, there is nothing in either the original ECOA or in the amendments or in the legislative history of the ECOA that refers to creating separate files for married persons. Also, it is ACB policy to set up a separate file for a woman if she requests it. California has a law guaranteeing this right and it received considerable publicity in 1974 and 1975. I contacted most of the credit bureaus in California and my research turned up only 27 women who applied for this service in 1975. There are approximately 11 and one half million women in California, so you can see just how big a consumer demand there is for this service. In Washington, D.C., another area where this service has been highly publicized, only nine women applied for it in 1975.

There are approximately 200 million files in credit bureaus today and around 215 million people living in America today. That means that a lot of people have five or ten files because they've moved . . . or there are a lot of folks out in cemeteries who have files . . . or that most people who want a file have one.

Things that are voluntary rather than mandatory are a whole lot cheaper.

Recurring Costs of Section 202.10 by Creditor Group

(millions $)

Creditor	Increased Run time & Report Costs	Increased Credit Report Costs	Total
Commercial Banks	$2.3	$8.5	$10.8
Credit Unions	0.6	4.2	4.8
Finance Companies	1.0	10.5	11.5
Oil Cos. & Other Credit Card Issuers	3.0	2.3	5.3
Retailers	4.9	18.5	23.4
S&L's, MBA's, & MSB's	0.7	1.0	1.7
Total	$12.5	$45.0	$57.5

Recurring Costs by Creditor Group*

(millions $)

Creditor	Increased Losses	Increased Collection Expense	Increased Record Retention Costs	Totals
Commercial Banks	$9.0	$2.9	$1.7	$13.6
Credit Unions	2.8	0.8	0.6	4.2
Finance Companies	13.5	1.3	2.4	17.2
Oil Cos. & Other Credit Card Issuers	1.6	3.7	0.7	6.0
Retailers	14.3	6.2	3.5	24.0
Savings and Loan Associations, Mortgage Bankers, & Mutual Savings Banks	4.0	0.9	0.1	5.0
Totals	$45.2	$15.8	$9.0	$70.0

*Excludes Section 202.10

The provision to provide married women with a credit history involves the following estimated non-recurring costs:

1. Printing and mailing the notice "Credit History for Married Persons" — $48.5 million.
2. Conversion of creditors' computerized or manual systems to implement the use of two names on an account and to change the creditors' files — $61.4 million.
3. Costs incurred by credit reporting agencies to change their procedures to be able to utilize information received from creditors in two names, to create additional files, and file storage — $34 million.

The recurring costs include:

1. Costs to creditors of additional computer run time from longer records and additional report preparation time — $12.5 million.
2. Costs to creditors of buying two or three credit reports instead of one for a single application — $45 million.
3. Costs to credit reporting agencies of increased data processing and customer service requirements — $45 million (prorated to creditors).

What kind of blizzard of mail will consumers be receiving through October 1, 1977, the deadline for the "Credit History for Married Persons" notice? Several surveys have concluded that the average consumer is going to get nine notices.

The least expensive notice is one that creditors can include with a periodic statement that is being mailed anyway. The most costly is a notice sent to accounts that do not receive periodic statements, so that the notices will have to be manually compiled, addressed, stuffed and mailed.

The total cost of printing and mailing notices and changing systems and handling responses, $109.9 million, is based on a response rate of ten percent. With a response rate of 30 or 40 percent, that figure goes up another $40 or $50 million.

The estimated non-recurring cost of $34 million to the credit reporting industry to implement dual name reporting may be on the low side. The recurring costs to credit reporting agencies, which I have allocated to creditors, depends upon how many credit reports are sold to creditors.

The total cost of dual name reporting — just one provision of Regulation B — comes to $204.4 million.

The major area of recurring costs in Regulation B comes from the section which prohibits the use of sex or marital status in "a credit scoring system or other method of evaluating applications." The problem is that this prohibition eliminates economic or rational discrimination and not just irrational prejudices. Many studies have shown that marital status is clearly related to creditworthiness. Recent studies have also shown that sex is related to creditworthiness. Women are better credit risks than men, other things being equal. Therefore, it has been documented that women had greater access to credit markets prior to Regulation B than they do today.

It has been estimated that eliminating these two variables from credit scoring systems will result in a two percent efficiency loss in a creditor's ability to judge between potentially good and bad applicants. This can be expected to lead directly to a two percent increase in costs, either through higher losses for bad debts or from a larger number of potentially good credit risks who are rejected in an effort to avoid losses, or through some combination of these possibilities. This will also lead to an increase in collection expenses as creditors attempt to minimize any increased losses. Recurring costs for this provision are estimated at $61 million.

The final recurring cost of Regulation B relates to the record retention requirements. This provision requires that creditors keep all records regarding all applicants for 15 months after the creditor notifies the applicant of action taken on an application or after a creditor adversely changes

Total Cost of Regulation B

Creditor	Recurring	(millions $) Non-recurring	Totals
Commercial Banks	$24.4	$34.8	$59.2
Credit Unions	9.0	11.3	20.3
Finance Companies	28.7	19.1	47.8
Oil Companies & Other Credit Card Issuers	11.3	15.8	27.1
Retailers	47.4	43.8	91.2
Savings & Loan Associations, Mortage Bankers & Mutual Savings Banks	6.7	7.0	13.7
Sub-totals	$127.5	$131.8	$259.3
Credit Reporting Agencies		34.0	34.0
Totals	$127.5	$165.8	$293.3

the terms or conditions of credit for an account. Most creditors maintained records of rejected applicants for only 90 days prior to the advent of Regulation B. File storage costs were estimated at 16 cents a year for each additional file. Applying this cost to the data on rejected applicants results in a cost of $9 million.

The total estimated cost of implementing Regulation B is $293.3 million or a little more than $4.04 per household. This suggests why increasing numbers of retailers are reportedly converting to bank cards or private label plans. Such a development would have a greater tendency to shift the cost than to eliminate it.

In summary, given the degree of competition in the market for consumer credit, it can be expected that generally these costs will be passed along to consumers. This may manifest itself in higher credit charges, increased rejection rates or higher prices for merchandise in the case of retail-related credit. All of these developments are likely to result in consumers paying more to get equal credit opportunity. The benefits must be measured in terms of human dignity and the benefits to society that should flow from greater social equity.

Let the Buyer Beware

An editorial in the *Wall Street Journal* states, "New laws and regulations widely hailed as benefits to 'consumers' put us on our guard these days. Too many such edicts fail to live up to the billing."

The editorial gives as an example a recent FTC consent order against bill collectors and comments, "To the extent that the new regulations make things easier for people who don't pay their bills — and, alas, there are genuine deadbeats in this imperfect world — it can only make life a little harder for people who do pay their bills. If the bill collectors lose some of their effectiveness and bad debt losses go up, creditors will either have to pass along the higher costs to consumers generally or tighten up on the issuance of credit. Either way, 'consumers' who are good credit risks will lose . . .

"Pretty much the same principle applies to the new rules the Federal Reserve Board has formulated to comply with the amendments to the Equal Credit Opportunity Act. Maybe there are good reasons for preventing lenders from arbitrarily refusing a man a loan just because he happens to be on welfare . . . But, to the extent that such limitations on the ability of lenders to discriminate result in a rise in bad debts, someone will pay. It will not be the lender."

The editorial concludes, "Caveat Emptor, it seems, has not lost its meaning. But it applies increasingly to the claims that 'consumerist' legislation offers some sort of free lunch. Some folks benefit from such measures, but the general consumer usually pays."

There is nothing more important than good communications when you are handling someone else's money

by August J. Meitzen
Manager
Credit Bureau
of Brenham, Tex.

I must admit that I am not yet an expert about the collection business. My background is in the consumer loan business. I was trained by an individual who is now the Chairman of the Board of a major lending firm and he taught me to get all the facts before making a decision.

As my mentor impressed on me many times, you must have enough information in your file to justify each loan you make; applying this same reasoning, the more you know about your collection clients the better you can service their accounts.

To make an analysis of my clients I have developed a detailed client application form. With information developed from this form I can coordinate my sales efforts, the collectors, bureau management, and the client all at once. I can avoid unprofitable business and work up a good clear contract with my client.

When a client gives us the O.K. to handle his collection business, we fill out this client application because it gives us a clear picture of the firm which has hired us.

The first part of our application form simply identifies our client, such as; name, address, name of owner/manager, name of bookkeeper, their office hours, and how long in business.

The next part of our form identifies the type of accounts to be collected, whether N.S.F. checks, 30-day accounts, instalment contracts, or term notes.

The third part of the application asks the amount of in-house collection work which has been done by client, the amount of pre-screening before credit was extended, how old delinquent accounts will be before debt is turned in for collection, and if any of the accounts will be mail-returns? This section is important because a collection procedure, to get payment in full, will largely depend on what was done before the collector received the account.

Other items listed in the client application are: attitude about forwarding accounts and suits, and client's wishes regarding the acceptance of instalment payments for liquidation of debts.

Still another part of the form deals with the client's special requests. For example; how often will he be requesting a progress report on the accounts? What are the client's instructions about suits? How often will accounts be assigned and how much business will be assigned? Who is the contact at his office for additional information on the collections? And, from what source did he hear about our collection service?

The last part of the client application deals with competition. Is the client using, or has he used, another collection agency? We have a separate report which we call an "Agency Analysis Report". It analyzes the client's experience with previous and present collection agencies. Some clients expect more than it is humanly possible to provide. Other clients can get us all into trouble by inadvertently using two agencies at the same time. Another agency/client problem is that the client may, from time to time, forget to report payments made to them by debtors. The Agency Analysis Report is not designed to analyze our competition but it's a back doorway to anticipate agency/client problems.

Although the client application form is lengthy, I believe a clear understanding makes a long-time friendship. Further, there is no question but that good communications are pre-established.

SUCCESS STORY . . .

an experiment in high school credit

A creative marketing project with far-reaching implications for the credit reporting and collection industries was recently completed in Rawlins, Wyoming, by the Rawlins High School second-year members of the Distributive Education Club of America (DECA). Assisted by an Advisory Committee of business professionals in Rawlins, including Linda Russell, owner of the Credit Bureau of Carbon County, eleven students of the Deca club set out to demonstrate the motto "DE is life and not a preparation for it" by testing the feasibility of a student credit card plan.

The purpose of the overall project was three-fold. From an *experimental* standpoint, the club wanted not only to test the feasibility of credit cards for local students but also to determine their effect upon students and merchants. From an *educational* standpoint, the club wanted to provide other Deca chapters and students with an opportunity to learn about credit. From an *informational* standpoint, the club wanted to present its findings to the local financial community, to Sales and Marketing Executive International for potential use and to ACB and American Collectors Association for evaluation.

The students' first step was extensive research into all aspects of the credit field and into the potential reliability of students who might receive credit cards. Survey instruments were then developed to gain information about the Rawlins marketing area. Next, methods for gathering random sample information about the actual population of the marketing area were studied. The sample information came from a valid cross section of the Rawlins High School student body, the potential users of the Decacard. Finally, procedures for analyzing data that would result from the entire project were determined.

As the project continued, application procedures for students desiring to participate in the experiment were determined. An application for a Decacard was drawn up along with a cardholder agreement, a sales form and a statement. Application policies focused on two areas: verification of credit information about each student and development of personal relationships between student-consumers and merchants. Students qualified to participate were screened according to their character, capacity (all sources of income and all current obligations), and conditions (special conditions that would influence ability to pay).

The Deca students placed certain limitations on the parti-

RIGHT: Left to right, Bob Hansen, DECA Instructor; Linda Russell, Manager of the Credit Bureau of Rawlins, Wyo.; and Kim Williams, Project Chairman, review the final tabulations for this year's DecaCard project. Because of its success, the project will be continued during the next school year.

cipants' use of their Decacard. Honored only at participating stores, a credit line of $50 per month was allotted to each student. If necessary, the store could limit or cancel a student's credit entirely. In addition, the Deca club guaranteed payment of all accounts to the merchants. Further points in the Deca program were parallel to procedures in a typical consumer-credit granter relationship: credit cards, lost and revoked cards, record keeping, collection and billing, delinquent accounts, etc.

A recent survey has revealed that teenagers are spending $26.1 billion per year, up from $5 billion two decades ago . . . and it's going mainly on cosmetics and health-care products.

Feasibility studies were conducted among members of the Rawlins High School student body and local merchants both prior to and following the experiment. The study revealed that the majority of students were not provided with consumer credit education by their parents. Thus, the Decacard experiment fulfilled a definite need. Opposing the idea that credit is a weakness, the students benefited from the realistic situation and wanted their credit experiences to be a part of their file at the credit bureau. The students understood that their parents' signatures were necessary for acceptance in the program but desired to prove their independence by not having their parents be responsible for them.

It was generally concluded that the program was "beneficial to student cardholders, member businesses, and members of DECA" and that this "should become a permanent project for high school students and member businesses in the Rawlins marketing area." The success of the project was due in part to the very detailed research of the Deca students before implementation and to the careful screening of students who were originally issued cards. Those who felt they overcharged the first month, either charged less or not at all the second month. The students developed loyalty to the stores they dealt with and although the merchants continued to want a guarantee against losses, they did not feel that their employees had too much additional work through participation in the experiment.

Recommendations resulting from the Decacard program were virtually all positive. As planned, the club did disseminate the information regarding its experiment to state and national DECA groups. The club recommended an increase in the number of students and merchants in the program, along with a periodic reevaluation to update any areas needing revision. All of the professional business people to whom the project was reported commended the students for their fine efforts. ACB also is most appreciative of the learning experiences provided as a result of the Decacard program for both the students and the merchants of Rawlins, as well as for the entire scope of credit education.

DecaCard procedures for making credit checks

1. All charges in excess of $20 must have approval from DECA.
2. Any member business may check the acceptability of a student's credit with DECA for credit approval for any amount at any time.
3. Each creditor is provided with a telephone number to call for verification of credit allowance.
4. Granting or denial of credit when such calls are made is the sole responsibility of DECA, providing all other procedures are followed.
5. An approval number, provided by DECA, must appear on the credit invoice.

General characteristics of students

1. More than half of all students at the junior and senior grade levels hold some kind of part-time job and earn in excess of $50 per month.
2. Less than half of all juniors and seniors in the Rawlins marketing area are allowed to use some form of credit through their parents or in their own names.
3. Of those who have access to some form of credit, the majority have use of a gasoline credit card, department store credit card or other local store account.
4. Parents in the Rawlins area tend to permit their children to buy automobiles with their co-signatures.

Share of market

The largest share of student purchases was in the variety or drug store businesses, followed closely by companies specializing in fashions. The smallest share went to a dry cleaning establishment. When asked why, most students replied, "If I give my dry cleaning to my mom, she'll pay for it."

EDUCATION UPDATE

An entire set of educational materials on *Crediscope* is now completed. Even though the January 1, 1978, deadline for final implementation of the new *Crediscope* format may seem far away, those offices that have not yet begun will experience a much smoother transition with employees and credit granters if they start now. The changeover will be greatly facilitated through use of the ACB videotape, mini-seminar, and reporter, consumer and credit granter pamphlets.

In addition, an Advanced Credit Bureau Management course with a bright new mailer and manual, a more comprehensive discussion outline and an additional set of hand-out references is ready for members. ACB instructors qualified to teach this course are the best. Topics covered include sales and marketing, personnel and financial management, public relations, credit reporting and collections and industry current events. This is an excellent overall update for everyone.

The How To Collect Commercial Accounts Seminar continues with the same excellent booklet, course outline and instructors. In addition, participants will now receive a packet containing samples of final letters, a public relations fact sheet, a listing sheet for past-due accounts and a creditor agreement.

Revisions are taking place on "Start Reporting" and "Reportrite." Watch for announcements of these updated programs.

Finally, don't forget the film library in ACB's Industry Relations Department. A list of films, videotapes and slide/tapes is available, too. Be sure to contact us for further information.

Management CALENDAR

STATE, GROUP STATE AND PROVINCIAL MEETINGS

Alabama — Tri-State meeting with Mississippi and Tennessee, Oct. 11, Biloxi
California — ACB of California, Aug. 20, Rickey's Hyatt House, Palo Alto
Colorado — ACB of Colorado, Sept. 9-10, Holiday Inn, Grand Junction
District of Columbia — Joint meeting with Maryland, Virginia and West Virginia, Sept. 25-27, Stouffer's National Center Hotel, Washington, D.C.
Idaho — ACB of Idaho, Sept. 22-23, Rodeway Inn, Boise
Iowa — ACB of Iowa, Sept. 22-23, National Motor Inn, Des Moines
Kansas — ACB of Kansas, Oct. 21-23, Canterbury Inn, Wichita
Kentucky — ACB of Kentucky, Sept. 13-15, Hyatt Regency, Lexington
Maryland — Joint meeting with District of Columbia, Virginia and West Virginia, Sept. 25-27, Stouffer's National Center Hotel, Washington, D.C.
Mississippi — Tri-state meeting with Alabama and Tennessee, Oct. 11, Biloxi
Missouri — ACB of Missouri, Sept. 16-18, Campus Inn, Columbia
Montana — ACB of Montana, Sept. 16-18, Heritage Inn, Great Falls
Nebraska — ACB of Nebraska, Oct. 8-9, Holiday Inn, Columbus
New England States — ACB of New England, Sept. 11-13, Black Point Inn, Prout's Neck, Maine
New York — ACB of New York, Sept. 23-25, Marriott Inn, Rochester
Ohio — ACB of Ohio, Oct. 1-2, Rodeway Inn, Columbus
Oklahoma — ACB of Oklahoma, Oct. 13-15, Lincoln Plaza, Oklahoma City
Oregon — ACB of Oregon, Sept. 9-11, Thunderbird Jantzen Beach, Portland
Pennsylvania — ACB of Pennsylvania, Sept. 25-27, Sheraton, Monroeville
Tennessee — Tri-state meeting with Alabama and Mississippi, Oct. 11, Biloxi
Virginia — Joint meeting with District of Columbia, Maryland and West Virginia, Sept. 25-27, Stouffer's National Center Hotel, Washington, D.C.
West Virginia — Joint meeting with District of Columbia, Maryland and Virginia, Sept. 25-27, Stouffer's National Center Hotel, Washington, D.C.

INSTITUTES

Southern — September 11-16, University of Georgia, Athens, Ga.
Midwestern — October 30-November 2, Indiana University, Bloomington, Ind.

INTERNATIONAL MEETINGS

ACB International Conference — June 13-16, 1978, Caesar's Palace, Las Vegas, Nev.
American Bankers Association Annual Convention — Oct. 15-19, Houston, Tex.
American Petroleum Credit Association — Sept. 11-14, Fairmont Hotel, Dallas, Tex.
National Retail Merchants Association-Credit Management Division — Sept. 25-30, Atlanta Hilton, Atlanta, Ga.

Management OPPORTUNITIES

WANTED: Credit bureau, automated or ready to be automated. All replies will be kept strictly confidential. Write ACB c/o Management Opportunities, 6767 Southwest Freeway, Houston, Tex. 77074. Attn: Box 439.

FOR SALE: Credit bureau/collection agency in Kentucky. Approximate trade area 70,000, manual files. Owner has retired. Or would sell collection department and give option on credit reporting department. Write ACB Management Opportunities, 6767 Southwest Freeway, Houston, Tex. 77074. Attn: Box 440

WANTED: Automated credit bureau interested in acquiring credit bureaus or collection agencies in Iowa and Illinois. Please reply in confidence to T. L. Midkiff, Exec. Vice Pres., Credit Bureau Services, Box 4489, Davenport, Iowa 52808.

FOR SALE: Credit bureau and collection agency located in a metropolitan area of northern California. Population one million. Owner retiring. Write ACB c/o Management Opportunities, 6767 Southwest Freeway, Houston, Tex. 77074. Attn: Box 441.

FOR SALE: Credit bureau and collection department in west central Iowa. TAP: 35,000. Write ACB c/o Management Opportunities, 6767 Southwest Freeway, Houston, Tex. 77074. Attn: Box 442.

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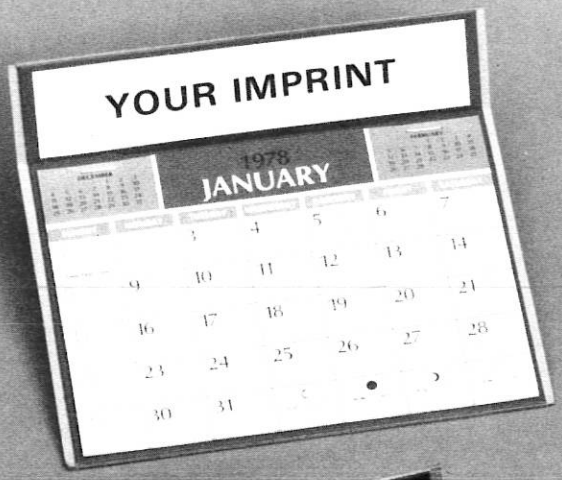

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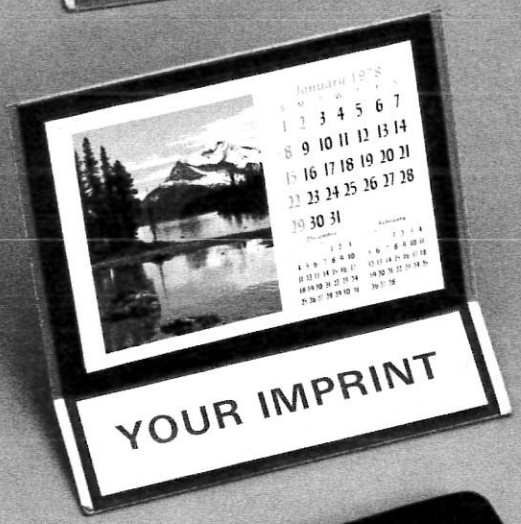

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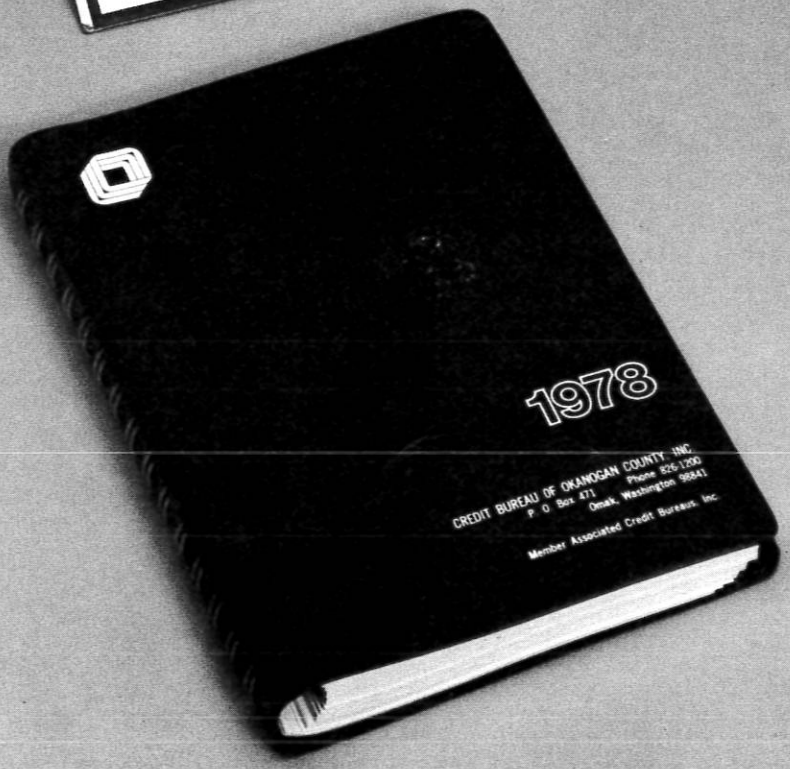

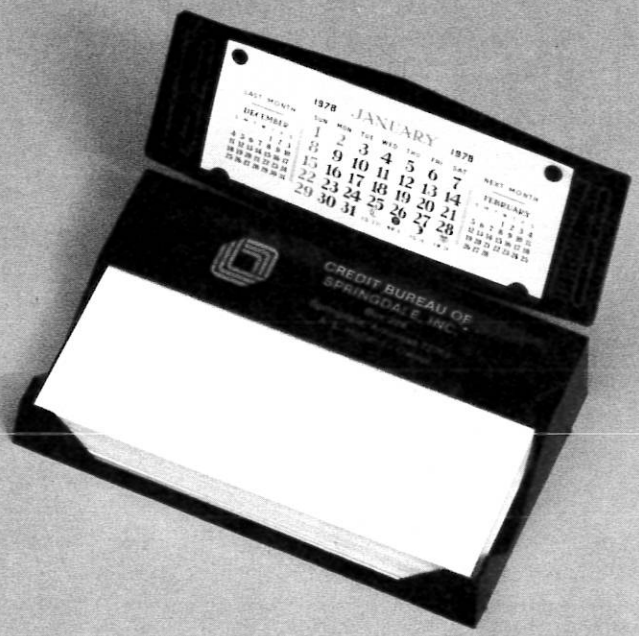

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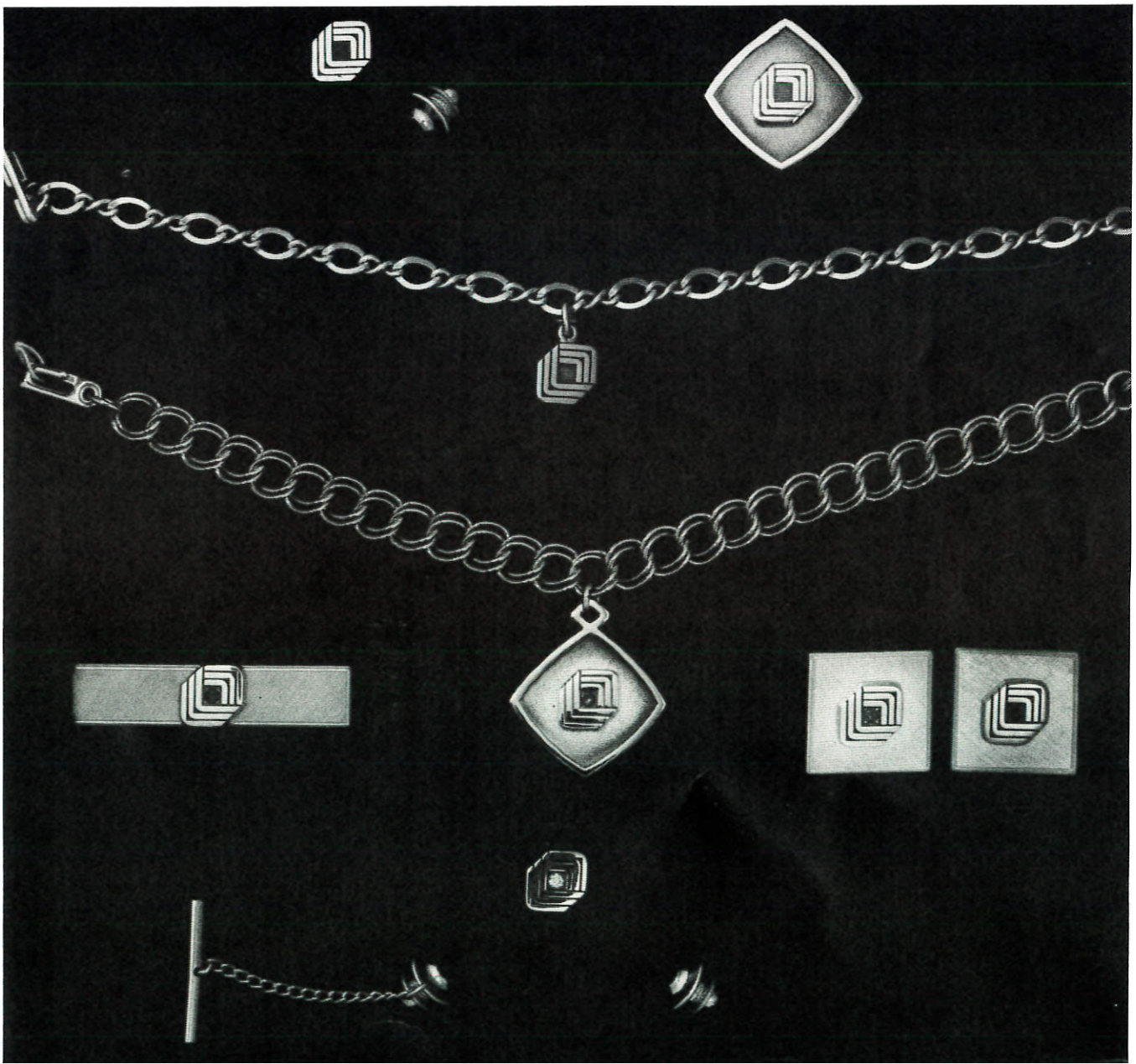

C

MANAGEMENT INFORMATION SERIES

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ANNOTATED PROCEEDINGS OF THE 1977 COMPLIANCE SEMINAR

- EQUAL CREDIT OPPORTUNITY (Regulation B)
- FAIR CREDIT REPORTING
- TRUTH IN LENDING (Regulation Z)

MERCHANTS RESEARCH COUNCIL
February 1977

Attch. C3

ANNOTATED PROCEEDINGS OF THE 1977 COMPLIANCE SEMINAR

About this Handbook . . .

At the request of attendees of the 1977 MRC Compliance Seminars, the edited and annotated scripts used by the instructors are presented. In addition, all releases by the Federal Reserve Board from December 29, 1976 to the publication date of February 1, 1977 are included. Appendix B of Regulation B is the most significant of those releases and reproductions of the model application forms are included.

Additional copies of this book are available from Merchants Research Council, Inc. P.O. Box 95377, Schaumburg, IL 60195.

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Disclaimer ... Every effort has been made to provide accurate and timely explanations of the various Federal Credit Statutes and Regulations. Merchants Research Council assumes no liability from reliance upon this material. On questions of law concerning your operation, you should consult your attorney. This material is informational and should be used as a background point of departure for your individual company needs.

CONTENTS

REGULATION B — AN OVERVIEW OF EQUAL CREDIT OPPORTUNITY

Introduction

(Original Reg B starts on pg.133.)

While the Truth in Lending Act took 100 months to complete the legislative process, the original Equal Credit Opportunity Act took only 29. The first version of ECOA was introduced in May of 1972 and was signed into law in October of 1974. However, the Equal Credit Opportunity Act Amendments of 1976 ran on an even faster track. That legislation was introduced in February of 1975 and was signed into law in March of 1976—a 13-month legislative gestation period.

The Equal Credit Opportunity Act Amendments become effective March 23, 1977—but that is not an entirely accurate statement. To be sure, §701 of the Act takes effect on that date, but all of the remaining provisions became effective upon enactment—March 23, *1976*.

Before there is panic in the streets let me hasten to say that the provisions of §701 which become effective in March of this year involved all of the *procedural* changes which we will be discussing today. The remainder of the provisions—those which became effective on March 23, 1976—relate to such matters as:

- Statutory authorization for the Board to exempt certain classes of transactions from full coverage of the Act;
- Creation of a Consumer Advisory Council to advise and consult with the Board on all aspects of the Consumer Credit Protection Act in which the Board has regulatory or enforcement authority;
- Establishment of new rules governing the relationship between state and federal antidiscrimination laws;
- Imposition on the Board and the Attorney General the responsibility for filing annual reports under ECOA; and
- Complete restructuring of the civil penalties provisions, including increasing the limit on class action recoveries for punitive damages from the lesser of one percent of net worth or $100,000 to the lesser of one percent of net worth or $500,00.

(Pg. 128—Many provisions of the Act not covered in Regs—Read Act)

The Board of Governors of the Federal Reserve System retained regulatory authority under ECOA, as amended, and on December 29, 1976, promulgated the final version of revised Regulation B which will become effective March 23, 1977. Today we will be limiting our discussion primarily to that revised regulation, but we will focus on specific procedural changes from existing Regulation B.

On March 23, 1977, revised Regulation B will supersede the existing regulation in its entirety; however, the existing regulation remains in effect until that date.

202.4 pg.159

General Rule

"A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction."

202.2(2) pg.158

As you know, the original Equal Credit Opportunity Act prohibited discrimination in the granting of credit on the basis of sex or marital status. The amendments, which become effective March 23, 1977, will add race, color, religion, national origin, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, and the good faith exercise of rights under the Consumer Credit Protection Act to the list of proscribed bases of discrimination. To this list, the Board has added, by regulation, the good faith exercise of any rights under any state law upon which an exemption has been granted by the Board. Presumably, this provision would add good faith exercise of any rights under, say, the Massachusetts Truth in Lending Act for which the Board has granted a state exemption.

Key Definitions

Although all definitions are important, several deserve particular attention:

202.2(c) pg.156

"Adverse action" is defined to mean (1) refusal to grant credit substantially as requested by the applicant, unless the creditor makes a counter-offer for a different amount of credit or on different terms, and the applicant uses or expressly accepts that counter-offer; or (2) unfavorable change in the terms of an account or termination of an account that does not affect all or a substantial portion of a class of the creditor's accounts; or (3) refusal to increase a credit line when an applicant requests such an increase in accordance with established procedures for that type of credit. The term does not include (1) a change in terms

expressly agreed to by an applicant; or (2) any action taken on an account because of inactivity, default, or delinquency; or (3) refusal to extend credit at point of sale (or loan) where such an extension (new operational requirement) of credit would exceed a previously established credit limit (under this provision, a credit limit must have, in fact, been established prior to the transaction, although that limit need not be disclosed to the applicant); or (4) refusal to extend credit prohibited by law; or (5) refusal to extend credit because the creditor does not offer the type of credit or credit plan requested. The Statement of Basis and Purpose which accompanied the publication of the final regulation indicates that this last provision relating to type of credit or credit plan is intended to apply, for example, where an applicant requests a credit card from an institution that does not issue credit cards. It is *not intended* to apply to a request for, say, a five percent loan from a creditor which only makes 18 percent loans.

202.2(e) pg.156

An "applicant" means any person who requests or has received an extension of credit from a creditor; however, it specifically excludes a person contractually liable only as a "guarantor, surety, endorser, or similar party."

202.2(f) pg.156

An "application" is an oral or written request for an extension of credit made in accordance with procedures established by the creditor for the type of credit requested. A "completed application for credit" means one in connection with which a creditor has received all of the information it regularly obtains and uses in evaluating similar applications; provided, however, the creditor must exercise reasonable diligence in obtaining the information. Where an application is incomplete with respect to matters that the applicant can complete, a creditor must make a reasonable effort to notify the applicant and allow a "reasonable opportunity" for the applicant to complete it. (*Note*: This is an affirmative notification requirement in the definitions section of the regulation. All other notification requirements are in §202.9.)

202.2(l) pg.156

A "creditor" is defined as meaning a person who, in the ordinary course of business, regularly participates in the credit decision. An assignee-creditor (that is, one which participated in the original credit decision and took an assignment of the contract after it was consummated) is absolved of liability for a violation committed by the original creditor unless the assignee "knew or had reasonable notice" of the act, policy, or practices constituting the violation before it became involved in the credit transaction.

202.2(n) pg.157

"Discriminate against an applicant" means to treat an applicant less favorably than other applicants.

202.2(o) pg.157

For the first time, the regulation defines "elderly" as meaning the age of 62 or older.

202.2(p) pg.157

An "empirically derived credit system" is defined as a credit *scoring* system that evaluates the creditworthiness primarily be allocating points (or weights) to key attributes of the applicant *and other aspects of the transaction*, in which the points and the entire score (1) are derived from an "empirical comparison" of creditworthy and non-creditworthy applicants who applied for credit within a reasonable preceding time period, and (2) determines, either alone or in conjunction with an evaluation of other information about the applicant, whether the applicant is creditworthy. Such a system is "demonstrably and statistically sound" if (1) either a complete population of all applicants, or an "appropriate" sample is used as a data base; (2) the system is developed for predicting creditworthiness with respect to the "legitimate business interests" of the creditor; (3) the system is validated, using "appropriate statistical principles," and separates creditworthy and non-creditworthy applicants at a "statistically significant rate;" and (4) its predictive ability is periodically revalidated, using "appropriate statistical principles," and is adjusted as necessary to maintain its predictive ability.

The final regulation permits a creditor to borrow a fully developed system or credit experience from which such a system may be developed. Any such system must meet all of the other requirements in the regulation for a demonstrably and statistically sound, empirically derived credit system, provided that if a creditor is unable to validate the system during the development process based on its own credit experience, then the system must be validated when sufficient credit experience becomes available. Any such borrowed system or system developed from a borrowed data which fails the validity test is not a "demonstrably and statistically sound, empirically derived credit system" for that creditor.

Earlier drafts of the proposed regulation required inclusion of rejected applicants in the initial model development and imposed a mandatory 95 percent or higher confidence level as the measure of statistical significance. Both of these requirements have been deleted in the final regulation.

202.2(t) pg.157

Any system for predicting creditworthiness of an applicant other than a "demonstrably and statistically sound, empirically derived credit system" is defined as being a "judgmental system of evaluating applicants."

202.2(s) pg.157

"Inadvertent error" means a mechanical, electronic, or clerical error which a creditor demonstrates was not intentional and occurred notwithstanding the maintenance by the creditor of procedures reasonably adapted to avoid any such error.

202.2(v) pg.157

"Negative factor or value" in relation to age means the utilization of a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants *or* is less favorable than the factor, value, or weight assigned to the age characteristic of the most favored non-elderly class of applicants. Thus, the highest score on the basis of age given to applicants who are less than 62 years old creates a floor, and persons 62 or older may not be given a score beneath that floor or a score beneath that warranted by the creditor's experience.

202.2(y) pg.158

"Pertinent element of creditworthiness" relates only to judgmental systems of evaluating applicants and is defined to mean any information about applicants that a creditor obtains and considers which has a "demonstrable relationship to a determination of creditworthiness."

202.2(aa) pg.158

"Public assistance program" is defined to mean any federal, state, or local program which provides "continuing, periodic income supplement, whether premised on entitlement or need." Examples given in the regulation are Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security, and Supplemental Security Income and unemployment compensation.

The final regulation gives to footnotes " ... the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature."

202.5(b) pg.159

Information Requests

The final regulation draws a sharp distinction between information *requests* and information *uses,* and credit managers must be extremely careful to distinguish between the right to request information and the right to use it.

202.13(a) pg.167

Information which must be requested. In connection with any *written* application for consumer credit relating to the *purchase of residential real property* a creditor must request, either on the application form or on a separate form that refers to the application, the following information regarding the applicant and joint applicant (if any): (1) race—national origin, using the categories American Indian or Alaskan Native, Asian or Pacific Islander, Black, White, Hispanic, Other (specify); (2) sex; (3) marital status, using the categories married, unmarried, and separated; and (4) age.

202.13(a)(2) pg.167

"Residential real property" means improved ral property used or intended to be used for residential purposes, including single family homes, dwellings for from two to four families, and residential units of condominiums and cooperatives.

202.13(d) pg.167

The applicant and joint applicant must be asked, but not required, to supply the requested information. If the applicant or joint applicant does not provide the information, or any part of it, the creditor must note that fact on the form, but is not required to supply the information from observation.

The regulation provides that any monitoring program required by an agency charged with administrative enforcement under the Equal Credit Opportunity Act may be substituted for the foregoing mandatory information requiredments. However, the regulation is not clear whether this is limited solely to monitoring information for real estate financing or whether it may be expanded by an enforcement agency to cover a broader group of—or all—transactions.

202.5(b)&(c) pg.159

Information which may be requested. The general rule is that, except as otherwise provided in Section 202.5 of the regulation, a creditor may request any information in connection with an application. That general rule does not, however, limit or nullify any federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

202.8, pg.162

A creditor is specifically permitted to request the information necessary to implement a "special purpose credit program," about which more will be said later, even if that information relates to one or more of the prohibited bases. Similarly, information about age, sex, or marital status of an applicant requested in an application for credit-related insurance is not prohibited.

202.5(c) pg.159

A creditor may request information about an applicant's spouse *only* if (1) the spouse will be permitted to use the account; (2) the spouse will be contractually liable for the account; (3) the applicant is relying on the spouse's income as a basis for repayment; (4) the applicant resides in a community property state or property upon which the applicant is relying as a basis for repayment is located in a community property state; or (5) the applicant is relying on alimony, child support, or separate maintenance payments from his or her spouse as a basis for repayment.

A creditor may request information about an applicant's former spouse *only* if the applicant is relying on alimony, child support or separate maintenance payments from his or her former spouse as a basis for repayment.

A creditor is specifically permitted to request that an applicant list any account upon which the applicant is liable and to provide the name and address in which the account is carried. A creditor may also ask the name in which the applicant has previously been extended credit.

Where an application is for *other than* individual (an undefined term which probably means no authorized users other than the obligor), unsecured credit, a creditor may request an applicant's marital status. Only the terms "married," "unmarried," and "separated" may be used; however, a creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

A creditor may inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments *only if* the creditor "appropriately discloses" to the applicant that such income need not be revealed if the applicant does not want the creditor to consider that income in the credit decision. In this connection, a creditor must provide an appropriate notice to an applicant before inquiring about source of an applicant's income, unless the terms of the inquiry—such as an inquiry specifically about salary, wages, investment income, or similarly specified sources—tend to preclude the unintentional disclosure of alimony, child support, or separate maintenance payment.

A creditor is permitted to inquire about an applicant's permanent residence and immigration status.

202.5(d)
pg.159

Information which may not be requested. If an applicant applies for an individual (again, undefined), unsecured account, a creditor may not request the applicant's marital status, unless the applicant resides in a community property state or unless property upon which the applicant is relying as a basis for repayment is located in a community property state. This prohibition does not preclude a creditor from requesting relevant information that may indirectly disclose marital status, such as asking about liability to pay alimony, etc., or the source of income to be used as a basis for repayment of credit requested (which may disclose that it is the spouse's income), or whether an obligation disclosed by the applicant has a co-obligor. However, credit managers should be extremely careful in making these collateral inquiries in order to avoid establishing a pattern of practice upon which an allegation of discrimination could be based.

A creditor is absolutely prohibited from requesting the sex of an applicant. However, an applicant may be requested to designate a courtesy title such as Ms., Miss, Mr. or Mrs., if the form appropriately discloses that the designation of such a title is optional. Otherwise, an application form may use only terms that are neutral as to sex.

A creditor may not request information about birth control practices or an applicant's intention or capability of bearing or rearing children. Similarly, a creditor is prohibited from making any inquiry about race, color, religion or national origin of an applicant *or any other person* in connection with a credit transaction.

202.5(e)
pg.160

Application forms. A creditor need not use written application forms. If written forms are used, creditors are permitted to design their own forms, or use forms prepared by another, or use the appropriate model application form contained in Appendix B to Regulation B. However, Appendix B was not released with the regulation. Appendix B is found at the back of this volume.

If a creditor elects to use an Appendix B form, the creditor may change the form (1) by asking for additional information not prohibited by the regulation; or (2) by deleting any information request; or (3) by rearranging the format without modifying the substance of the inquiries, provided that the appropriate notices regarding the (a) optional nature of courtesy titles, (b) the optional disclosure about alimony, etc., and (c) the limitation on marital status inquiries are included in the appropriate places on the form if those items to which the notices relate appear on that form.

If a creditor uses an appropriate Appendix B form (when available), or to the extent that the creditor modifies an Appendix B form in accordance with the foregoing rules, that creditor is deemed to be acting in compliance with the provisions of the regulation relating to permissible information about a spouse or former spouse and relating to information which a creditor may not request.

Creditors may continue to use existing stocks of application forms until they are exhausted, but in no event later than March 23, 1978.

202.6(b)
pg.160

Information Uses

In evaluating an application, a creditor may consider any information the creditor obtains, unless the information is prohibited by the Equal Credit Opportunity Act or Regulation B, provided the information *is not used* to discriminate against an applicant on a prohibited basis.

In both of the earlier proposed drafts of Regulation B, the Board, in a lengthy footnote, attempted to outline the dangers of using certain information not specifically proscribed by the regulation when the result may be to deny credit to a class of persons protected by the act and regulation at a substantially higher rate than persons not members of that class. This is the "effects test" laid down by the U.S. Supreme Court in *Griggs v. Duke Power Co.,* 401 U.S. 424 (1971), and *Albemarle Paper Co. v. Moody,* 422 U.S. 405 (1975).

Under the "effects test," if a creditor uses information not specifically proscribed (for example, the zip code of the applicant) with the result that members of a class of applicants protected by the act are excluded from creditworthiness at a rate substantially higher than persons not in that class, the use of that information may be a violation of the act and regulation, unless the creditor establishes that the information has a "manifest relationship" to creditworthiness. Even if the creditor can make such a showing, an applicant might then be able to show that other information which a creditor could use with a lesser discriminatory effect would serve the creditor's purpose equally well in predicting creditworthiness. The burden then shifts to the creditor to rebut that showing; that is, it then becomes the creditor's burden to show that such other information would not serve equally well in predicting creditworthiness. If the creditor is unable to rebut the applicant's showing, the creditor could be held to have employed the information merely as a pretext for discrimination.

The footnote in the final regulation deletes any discussion of the "effects test" or the Board's understanding of it; that footnote merely indicates that Congress intended an "effects test"concept to apply and cites the *Griggs* and *Albemarle* cases, as well as the House and Senate committee reports.

Probably no amount of regulatory drafting could have completely avoided the "effects test" problems. However, since both the *Griggs* and *Albemarle* cases involved discrimination in *employment*—not credit—many observers had urged that the Board interpret the precise manner in which the "effects test" should be applied to credit discrimination. The final regulation contains no such interpretation or other guidelines.

The difficulty with the "effects test" stems from the fact that a creditor may be held to have discriminated against members of a class of protected persons, even though the creditor had no *intent* to discriminate. Examples of the type of information which may cause this problem are home ownership, zip code, census tract, and even such otherwise innocuous classifications as occupation or profession and income. For example, if one class of persons protected by the act earned income at a rate below the national average (or the average within the creditor's trade area), use of that information could, conceivably, be the basis for a charge that using that information had the "effect" of discriminating against that class of persons. The creditor must then show that that information had a "manifest relationship" to creditworthiness and must be able to refute any argument by the applicant that the creditor could use other information with a lesser discriminatory effect which would serve equally well in predicting creditworthiness. Of course, with respect to income, creditors could probably carry the necessary burden of proof; however, such characteristics as home ownership, occupation, and zip code would undoubtedly present more formidable burdens of proof.

Except as specifically permitted in the Equal Credit Opportunity Act and Regulation B, a creditor may not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants. The exceptions, however, provided in the act and regulation are many—and often highly technical.

202.5(d)
pg.159

By way of exception, a creditor may consider the marital status of an applicant or the source of an applicant's income for the purpose of ascertaining the creditor's rights and remedies applicable to a particular extension of credit, but not to discriminate in a determination of creditworthiness. Similarly, a creditor may consider any prohibited basis in connection with determining an applicant's qualification for a "special purpose credit program" (to be discussed in greater detail shortly).

202.2(t)&(y)
pg.157

In a judgmental system of evaluating creditworthiness, age and receipt of public assistance benefits may be considered, but only for the purpose of determining a pertinent element of creditworthiness—not as a general predictive factor. For example, a creditor may consider, in connection with public assistance income, the length of time an applicant has been receiving that income, whether the applicant intends to continue residing within a jurisdiction required for receipt of benefits, and the status of an applicant's dependents upon which the assistance program is based. In connection with age, a creditor may consider, for example, the occupation and length of time until retirement in order to ascertain whether the applicant's income (including retirement income) will support the extension of credit. A creditor may also consider the adequacy of any security offered if the duration of the credit extension will exceed the life expectancy of the applicant. Age may also be considered to assess the significance of the applicant's length of employment or residence.

In a demonstrably and statistically sound, empirically derived credit system, a creditor may use age—but not receipt of public assistance benefits—as a general predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when age is to be used to favor the elderly applicant in extending credit.

A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and such additional information as may be necessary to ascertain the creditor's rights

and remedies regarding payment.

202.6(b)(6) pg.161 If a creditor considers credit history in evaluating the creditworthiness of applicants, it must consider (unless due to inadvertent error): (1) the credit history, when available, of joint accounts of the applicant and a spouse or accounts which both are permitted to use; (2) if the applicant requests, any information which tends to indicate that the credit history being considered *does not* reflect the applicant's creditworthiness; and (3) if the applicant requests, and if available, the credit history of any account in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

202.6(c) pg.161 A creditor is specifically permitted to consider and apply state property laws which directly or indirectly affect creditworthiness.

202.6(b)(5) pg.161 Where an applicant relies on alimony, child support, or separate maintenance payments, a creditor must consider such payments as income to the extent that they are likely to be consistently made. In this connection, a creditor may consider whether the payments are made pursuant to a written agreement or court decree, the length of time the payments have been received, the regularity of receipt, the availability of procedures to compel payment, and the creditworthiness of the payor, including credit history, where available, under the Fair Credit Reporting Act.

202.6(b)(3) pg.161 Three absolute prohibitions regarding the use of information remain in the regulation: (1) A creditor may not assume or rely on statistics relating to the likelihood that any group of persons will bear or rear children and, for that reason, will receive diminished or interrupted income. (2) A creditor may not take into account the existence of a *telephone* listing in the name of an applicant for consumer credit (but a creditor may take into account the existence of a telephone in the applicant's residence). (3) A creditor may not discount or exclude the *income* of an applicant or the spouse of an applicant on a prohibited basis, or because it is from part-time employment, an annuity, pension, or other retirement benefit. A creditor may, however, consider the amount and probably continuance of *any income* in evaluating an applicant's creditworthiness.

202.6(b)(4) pg.161

202.6(b)(5) pg.161

Creditor Practices

In addition to limitations on the *information* creditors may request and/or use, the final regulation places a number of restrictions on the *practices* which a creditor may employ.

202.5(a) pg.159 A creditor may not make an *oral or written* statement in advertising or otherwise to applicants or prospective applicants that would *discourage* on a prohibited basis a reasonable person from making or pursuing an application.

202.7(a) A creditor may not refuse to grant an *individual account* (a term which is undefined) to a creditworthy applicant on the basis of a prohibited basis. Nor may a creditor prohibit an applicant from opening or maintaining an account in a birth-given *first name* and surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

202.7(b)

202.7(c) pg.161 A creditor may not require reapplication or change the terms of an account or terminate an account on the basis of an applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status, unless the creditor has "evidence" of inability or unwillingness to repay. However, a creditor may require reapplication in connection with an open end account on the basis of a change in an applicant's marital status where the credit granted was based on income earned by the applicant's spouse, if the applicant's income alone at the time of the original credit application would not support the amount of credit currently extended. Earlier drafts of the proposed regulation permitted a creditor to require reapplication in these circumstances in the event of a change in name or marital status; the final regulation limits a creditor's right only to instances of change in marital status.

202.7(d) By way of general rule, a creditor may not *require* the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies for the creditor's standards of creditworthiness for the amount and terms of credit requested. However, when property is relied upon to establish creditworthiness, even in an unsecured transaction, a creditor may consider state laws, the form of ownership of the property, its amenability to attachment or execution, and other factors that may affect the value of the applicant's interest in the property. In this case, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed to be necessary, to make the property relied upon available to satisfy the debt in the event of a default. If the applicant requests *secured credit* and the applicant's spouse or other person has or will have an interest in the property offered as security, the creditor may require the signature of the spouse or other person on any instrument necessary to make the property available for satisfaction of the debt in the event of default.

202.7(d)(4) pg.162

202.7(d)(5) pg.162 Where, under a creditor's standards of creditworthiness, a co-signer is necessary to support the extension of credit requested, the creditor may impose such a requirement. The applicant's spouse may serve as the

co-signer but the creditor may not require that the spouse be the co-signer. Furthermore, a creditor may not impose requirements on any such co-signer that a creditor may not impose on an applicant.

202.7(d)(3) pg.162

If a married applicant requests unsecured credit and resides in a community property state, or if the property upon which the applicant is relying is located in a community property state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under state law to make the community property available to satisfy the debt in the event of default, if (1) state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested, and (2) the applicant does not have sufficient separate property to qualify for the credit requested without regard to community property.

202.7(e) pg.162

A creditor may not refuse to extend credit and may not terminate an account because credit life, accident, health, or disability insurance is not available to an applicant on the basis of the applicant's age.

Notifications

202.9, pg.163

Creditors must notify applicants of action taken within 30 days after receiving a "completed application." Similarly, creditors must notify applicants of action taken within 30 days after taking adverse action on an uncompleted application or with respect to an existing account. A creditor must also notify an applicant of action taken within 90 days after the creditor has notified the applicant of a counter-offer to extend credit to the applicant other than in substantially the amount or substantially the terms originally requested by the applicant, if the applicant during that 90-day period has not expressly accepted or used the credit offered. For example, if an applicant should request a $6,000, 48-month automobile loan, and the creditor makes a counter-offer to extend $5,000 credit for 36 months, the creditor must notify the applicant of the action taken within 90 days after making the counter-offer, unless the applicant expressly accepts or uses the credit pursuant to the counter-offer.

Notification of approval may be express or by implication where, for example, the applicant receives a credit card in accordance with the application. However, *any notification of adverse action must be in writing.*

A notification of adverse action must contain a statement of the action taken, the Equal Credit Opportunity Act notice (now required to be given to all applicants, not just rejected applicants, under §202.4(d) of existing Regulation B) and either a statement of specific reasons for the action taken or written disclosure of the right of an applicant to request and receive a statement of the reasons for adverse action. If the creditor does not furnish the statement of specific reasons and, instead, discloses an applicant's right to receive the statement of reasons, the applicant must request such a statement within 60 days after the creditor notifies the applicant of the adverse action, and the creditor must supply the statement of reasons within 30 days after receiving the applicant's request. Any such disclosure of an applicant's right to receive a statement of reasons for adverse action must include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the statement of reasons orally, the notification must also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within 30 days after a written request for confirmation is received by the creditor.

Where there is more than one applicant, notification need be given to only one of them, but it must be given to the primary applicant where one is readily apparent.

If the transaction involves more than one creditor and the applicant accepts the credit offered, only the creditor extending the credit need supply the notice. That notice would, of course, be a notice of approval which may be express or implied. If the transaction involves more than one creditor and no credit acceptable to the applicant is offered, each creditor must furnish the notification of adverse action and comply with the other provisions which that involves. The required notifications may be made directly by each creditor or indirectly by a third party on their behalf, provided that the identity of each creditor taking adverse action is disclosed. Whenever notification is to be provided through a third party, a creditor is not liable for any violation by the third party if the creditor accurately and in a timely manner has provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

The statement of reasons for adverse action must disclose the principal reason or reasons for that action. A statement that the applicant did not meet the creditor's "internal standards" or that the applicant "failed to achieve the qualifying score" on a credit scoring system are *insufficient* to comply with the requirements of the regulation.

The creditor may formulate its own statement of reasons for adverse action or may use all *or a portion* of the checklist of reasons provided in the final regulation. Failure to comply with any of the notice require-

ments is not a violation if caused by an "inadvertent error," provided that the creditor corrects any such error as soon as possible after discovery and commences compliance with the notification requirements of the regulation.

Approved applications about which the parties contemplate that the applicant will make further inquiry and about which an applicant makes no such further inquiry for 30 days after making the application may be considered as withdrawn, and a creditor need not comply with the notification requirements.

202.10, pg.164 **Furnishing Credit Information**

For every account established on or after June 1, 1977, a creditor that furnishes credit information must determine whether the account is one that the applicant's spouse is permitted to use or for which both spouses are contractually liable and designate any such account to reflect the participation of both spouses. In this connection, a creditor need not distinguish between participation as a user or as a contractually liable party.

Beginning June 1, 1977, information furnished on a routine basis to consumer reporting agencies with respect to accounts established on or after that date must be furnished in a manner that will enable the agency to provide access to the information in the name of each spouse. However, information furnished pursuant to a request regarding a specific account (whether furnished to a credit reporting agency or other party) must be furnished in the name of the spouse about whom such information is requested.

For every account established prior to and in existence on June 1, 1977, a creditor that furnishes credit information must, not later than that date, either (1) determine whether the account is one that an applicant's spouse is permitted to use or upon which the spouses are contractually liable, designate any such account to reflect the fact of participation of both spouses, and comply with the dual reporting requirements,

pg.165 or (2) mail or deliver to all applicants, or all married applicants, one copy of the "*[Notice]* Credit History For Married Persons" advising them of their right to have information reported in the names of both spouses. Only one such notice must be sent to each applicant (or married applicant), and all such notices must be mailed or delivered by October 1, 1977. For open end accounts, this requirement may be satisfied by mailing that one notice at any time prior to October 2, 1977 regarding each account for which a billing statement is sent between June 1 and October 1, 1977.

The text of the "[Notice] Credit History For Married Persons" is set out in the body of the regulation and is drafted for use in connection with open end credit accounts. For credit accounts other than open end, the text of the notice may be modified to delete reference to "use" of an account. The notice may be further modified or supplemented as necessary to permit identification of the account.

A creditor may elect to combine the alternative methods of compliance with the dual reporting requirements by designating those accounts on which the creditor has the information and sending the notice where the creditor does not have the information.

Within 90 days after receiving a properly completed request to change the manner in which the information is reported, a creditor must designate the account to reflect the participation of both spouses and thereafter comply with the dual reporting requirements.

All information requested in the notice must be supplied before the creditor is required to change the method of reporting; that is, creditors need respond only to requests that contain all information necessary to make the change on the account. However, a creditor is not required to change the name in which an account is *carried* pursuant to a request made by an applicant to change the method of *reporting* information.

Failure to comply with the dual reporting requirement either with respect to the sending of notices or the reporting of account information, is not a violation of the regulation when caused by an "inadvertent error," provided that on discovering the error, the creditor corrects it as soon as possible and commences compliance with the dual reporting requirements.

202.12, pg.166 **Retention of Records**

A creditor may retain in its files any prohibited information if that information was obtained (1) from any source prior to March 23, 1977; or (2) at any time from credit reporting agnecies; or (3) at any time from the applicant or others, without specific request of the creditor; or (4) at any time required to monitor compliance with the Equal Credit Opportunity Act, Regulation B, or other federal or state statutes or regulations.

Creditors are required to retain for 25 months the original or a copy of (1) any application forms; and (2) any information required to be obtained to monitor compliance with the Equal Credit Opportunity Act, Regulation B, or other similar law; and (3) any written or recorded information used in evaluating creditworthiness not returned to the applicant; and (4) notification of action taken or statement of reasons for

adverse action (or if furnished orally, any notation or memorandum of them); and (5) any written statements submitted by an applicant alleging violation of the act or regulation.

In addition, creditors are required to retain for 25 months after the date that a creditor notifies an applicant of adverse action regarding an account, other than in connection with an application, the original or a copy of (1) any written or recorded information concerning the adverse action, and (2) any written statement submitted by an applicant alleging violation of the act or regulation.

In the event a creditor has actual notice that it is under investigation or is subject to an enforcement proceeding or has been served with a notice of civil action filed, that creditor must retain all of the required information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

Failure to comply with the record retention provisions is not a violation when caused by "inadvertent error."

202.11, pg.165 **Relation to State Law**

Regulation B preempts only those state laws which are inconsistent with it, and then only to the extent of the inconsistency. However, a state law is not inconsistent if it affords greater protection to an applicant.

State law is deemed to be inconsistent and less protective to the extent that such law (1) requires or permits a practice or act prohibited by the Equal Credit Opportunity Act or Regulation B; or (2) prohibits the individual extension of consumer credit to both spouses if each individually and voluntarily applies for such credit; or (3) prohibits inquiries or collection of data required to comply with the Equal Credit Opportunity Act or Regulation B; or (4) prohibits inquiry or use of age in a demonstrably and statistically sound, empirically derived credit system or prohibits inquiry or use of age to determine a pertinent element of creditworthiness or to favor an elderly applicant; or (5) prohibits inquiries necessary to establish or administer a "special purpose credit program." A prior draft of the proposed regulation would have held state law to be inconsistent if it prohibited inquiries used in any model application form published in Appendix B. That provision, unfortunately, was deleted from the final regulation.

If each spouse separately and voluntarily applies for and obtains a separate account with the same creditor, the accounts may not be combined for purposes of determining permissible finance charges or loan ceilings under federal or state law. With regard to loan ceilings, each spouse may be individually liable up to the amount of the loan ceiling, less the amount for which both spouses are jointly liable.

A determination as to whether a state law is inconsistent with the Equal Credit Opportunity Act and Regulation B will be made only in response to a request for a formal Board interpretation. Any such request must be made in accordance with the procedures set up in §202.1(d) of the regulation and must furnish the supporting documents and address each of the criteria for such a determination set out in Supplement I which was published with the regulation.

Supplement I contains procedures and the criteria under which a state may apply for exemption pursuant to §705(g) of the Equal Credit Opportunity Act. In order for a state to obtain an exemption, creditors under that state's law must be required to abide by the same, or *more stringent,* conditions and prohibitions as described in §§701 and 702 of the Equal Credit Opportunity Act. However, obligations or responsibilities imposed on applicants must be *no more* costly, lengthy, or burdensome than under the federal act. Applicants' rights and protections must be substantially similar to, or *more favorable* than, those provided by the federal act. In states where exemptions have been granted, federal enforcement authorities retain joint administrative authority with state agencies.

202.3, pg.158 **Special Exceptions to the General Rule**

Although the Equal Credit Opportunity Act is Title VII of the Consumer Credit Protection Act, it is not limited in its application to extensions of consumer credit. It covers all forms of credit—even credit extended to partnerships and corporations. However, the Board has defined several classes of transactions and has accorded them special treatment and has created special rules for certain types of "special purpose credit programs."

Special treatment for certain classes of transactions. The final regulation creates five special classes of transactions which are subject only to limited coverage: public utilities, securities, incidental, business, and governmental credit. The special treatment accorded to each of these classes is expressed in rather technical regulatory language, and I refer you to §202.3 of Regulation B for the specific technical provisions. Since most of you here are not engaged in extensions of public utilities, securities, or governmental credit, we will confine our discussion to special treatment of incidental and business credit.

pg.158

"Incidental credit" is defined as consumer credit extended for reasons other than financing public utility

services or securities and which (1) is not extended pursuant to the terms of a credit card account, and (2) is not subject to a finance charge, and (3) is not by agreement payable in more than four installments. Credit meeting the "incidental" definition is exempt from the following provisions of Regulation B:

pg.159 • Section 202.5(c) relating to information about a spouse or former spouse;

pg.159 • Section 202.5(d)(1) relating to information about marital status;

pg.160 • Section 202.5(d)(2) relating to information about income from alimony, child support, or separate maintenance payments;

pg.160 • Section 202.5(d)(3) relating to information about the sex of an applicant (but only to the extent necessary for medical records or similar purposes);

pg.161 • Section 202.7(d) relating to signatures of a spouse or other person;

pg.163 • Section 202.9 relating to notifications;

pg.164 • Section 202.10 relating to the furnishing of credit information; and

pg.166 • Section 202.12(b) relating to the retention of records.

202.3(e) pg.159 Business credit is defined as credit primarily for business, commercial, or agricultural purposes, but excludes credit extended to finance public utility services or securities. Business credit is exempt from the following provisions of Regulation B:

pg.159 • Section 202.5(d)(1) relating to information about marital status;

pg.163 • Section 202.9 relating to notifications, unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action;

pg.164 • Section 202.10 relating to the furnishing of credit information; and

pg.166 • Section 202.12(b) relating to the retention of records, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

202.8, pg.162 *"Special purpose credit programs."* These programs fall into three general categories: (1) Those authorized by federal or state law for the benefit of an economically disadvantaged class of persons. This class is not further defined, presumably, because the statute authorizing such a program would define the class. (2) Any credit assistance program offered by a not-for-profit organization, as defined under §501(c) of the Internal Revenue Code of 1954, for the benefit of its members or an economically disadvantaged class of persons. (3) Any special purpose credit program offered by a profit-making organization, or in which such an organization participates, to meet special social needs, provided that the program is established and administered pursuant to a written plan that identifies the class or classes of persons the program is designed to benefit, sets forth the procedures and standards for extending credit pursuant to the program, and is established and administered for a class of persons who, under customary standards of creditworthiness either "probably" would not otherwise receive credit or "probably" would receive it on less favorable terms.

A special purpose credit program may require an applicant to possess one or more of the common characteristics relating to race, color, religion, national origin, sex, marital status, or receipt of public assistance benefits, and a creditor may request and consider information about those common characteristics which all applicants are required to possess, even if those characteristics involve a prohibited basis. However, a creditor may not discriminate on the basis of a characteristic that all applicants are not required to possess. For example, if a public assistance program is for Blacks and meets all of the other requirements of the regulation, the creditor may discriminate against non-Blacks, but may not discriminate, say, on the basis of sex.

If financial need is one of the criteria for a special purpose program, notwithstanding any other provision of the regulation, a creditor may request and consider information regarding an applicant's marital status, income from alimony, child support, or separate maintenance, and the spouse's financial resources. Furthermore, the creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose credit program if required by federal or state law.

202.1(b)(c) pg.155 **Regulations—Enforcement—Penalties**

Not only did the Board retain regulatory authority, the 1976 amendments to the Equal Credit Opportunity Act extended further the authority to the Board to interpret its own regulations. Effective March 23, 1976, the Equal Credit Opportunity Act, as amended, relieves a creditor from civil liability resulting from any act done or omitted in good faith in conformity with any rule, regulation, or interpretation by the Board, or with any interpretations or approvals issued by a duly authorized official or employee of the Federal Reserve System, notwithstanding that after such act or omission has occurred, such rule, regulation,

interpretation, or approval is amended, rescinded, or otherwise determined to be invalid for any reason. The Board has implemented this statutory provision by designating the officers of its Division of Consumer Affairs as the officials authorized to issue those interpretations. To date, two such official staff interpretations have been issued. The revised regulation, which becomes effective March 23, 1977, retains this delegation of regulatory authority to officers of the Division of Consumer Affairs.

Appendix A pg.168

The *enforcement authority* was not changed by the 1976 amendments. The names and addresses of the federal agencies charged with enforcement are listed on page 168 of your handbook, and I refer you to that page rather than reading off all of the names and addresses at this time.

202.1(c)

With respect to *penalties,* I have already referred to the increase in maximum class action recoveries. However, class actions are but one facet of the penalty "gem." Briefly summarized, the *civil penalties* for violation of the Equal Credit Opportunity Act or Regulation B are as follows:

202.1(c)

- Actual damages, without limitation, in either individual or class actions; plus
- Punitive damages (a) not greater than $10,000 in individual actions, or (b) not greater than the lesser of $500,000 or one percent of the creditor's net worth in class actions; plus
- Injunctive and declaratory relief, if granted by the court; plus
- Court costs and reasonable attorney's fees as determined by the court.

In determining the amount of class action recovery, the court is directed to consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failure of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

The statute of limitations under the act (that is, the period during which civil action may be brought for a violation) runs for two years from the date of the violation, except that whenever an agency having administrative enforcement authority under the act commences an enforcement proceeding within that two-year period, or whenever the Attorney General brings an action for injunctive or other relief within that two-year period, then any applicant who has been a victim of discrimination which is subject to that enforcement proceeding or Attorney General action may bring suit not less than one year after the commencement of the agency enforcement proceeding or Attorney General action.

Any suit under the Equal Credit Opportunity Act may be brought in United States District Court without regard to the amount in controversy or in any other court of competent jurisdiction.

In any civil suit or in any agency proceeding, a creditor's credit granting standards are made specifically subject to "appropriate discovery procedures." That is, a creditor can be required to reveal to the plaintiff and to the court or agency its credit granting standards.

NEW OPERATING REQUIREMENTS UNDER REGULATION B — EQUAL CREDIT OPPORTUNITY

Introduction

It is very likely that each person sitting in this audience today will encounter at least one unique Regulation B compliance problem. Unfortunately, time does not permit offering solutions to all of those problems; instead, we will be discussing those aspects of credit operations and procedures which are likely to be in greatest need of review and reevaluation under revised Regulation B.

While no credit management system should ever remain static, but should always be subjected to continuing reevaluation, I have divided my comments today into two general categories: (1) "one-time" changes in forms, procedures, and/or activities, and (2) procedures and activities which require repetitive or constant monitoring.

"One-time" changes

New 202.2(c) pg.156

In two instances, certain acts of a creditor are "adverse action," thereby triggering the notification and records retention requirement, unless the applicant "expressly" agrees to or accepts those actions. Specifically, if a creditor makes a counter-offer to grant credit in a different amount or on different terms from those requested by the applicant, it is adverse action unless the applicant uses or "expressly" accepts the credit offer. Similarly, a change in the terms of an existing account is not adverse action if the change is "expressly agreed to" by the applicant.

While the term "expressly" is not defined in the regulation, *Webster's Dictionary* defines it as meaning "explicitly; exactly; precisely." Thus creditors—particularly lenders—which routinely make counter-offers should prepare and stock forms on which applicants may indicate their express acceptance of those counter-offers. For the same reason, creditors which review individual existing accounts and selectively change the terms of some of those accounts should prepare and stock forms on which existing account holders may expressly agree to any such change.

A refusal to increase a credit limit when an applicant requests an increase in accordance with "procedures established" by the creditor for that type of credit is "adverse action." Along the same line, an "application" is defined to mean an oral or written request for an extension of credit that is made in accordance with "procedures established" by the creditor for the type of credit requested. Both of these definitional requirements underscore the need for every creditor to have *written procedures* under which credit may be applied for, either originally or by way of an increased credit line. If an applicant does not follow these procedures, then "adverse action" cannot result from unfavorable consideration. However, a word of caution is appropriate: those procedures should not be so obscure or stated in such esoteric language that they cannot be reasonably understood. The procedures should be reasonable in relation to the type of credit extended.

New 202.2p. pg.157

The definition of an "empirically derived credit system" includes a requirement that points be allocated to "key attributes describing the applicant *and other aspects of the transaction*" (emphasis added). Many credit scoring systems in use today attribute points to applicants' attributes but do not ascribe any value to "other aspects of the transaction." (Fed. says other aspects requirement not intended—will issue clarification. Each such system should be reviewed before March 23, 1977 to be sure that *some aspect* of the transaction is, itself, scored.

New 202.5 Restudy

One of the most important—if not the most important—one-time change which must be made before March 23, 1977 is the revision of application forms. Unfortunately, the Federal Reserve Board did not release Appendix B containing its model forms when it promulgated the final regulation on December 29, 1976. However, when those forms are released in mid to late January, every creditor should get copies of the complete set and review them very carefully, bearing in mind the following general rules:

- The forms may be modified by deleting any information request.
- The forms may be modified by adding additional information requests which are not prohibited by ECOA or Regulation B.
- The forms may be rearranged so long as the appropriate notices regarding the limitation concerning marital status inquiries and the optional nature of the use of courtesy titles or disclosure of alimony, etc., are included, if the items to which they relate are included on the form. For example, if no courtesy titles are

requested on the form, then the notice about their optional use need not be included.

- Creditors must use or adapt the *appropriate* model application forms in order to be protected in using them. That is, a creditor extending unsecured open end credit cannot use or adapt the model form for secured, closed end real estate credit and retain protection.

202.9(b)(1) New ECOA Notice not required on applications

Another forms change is required, effective March 23, 1977, and that is the notice of the Equal Credit Opportunity Act. Most creditors now have that notice printed on existing application forms which, as was pointed out earlier, they may continue to use until exhausted, but not later than March 23, 1978. However, the new Equal Credit Opportunity Act notice form need be given only to applicants against whom "adverse action" was taken on or after March 23, 1977. That revised form is set out in the text of the regulation on page 163 of your MRC Compliance handbooks and, you will note, includes references to the additional prohibited bases of discrimination added by the 1976 amendments to ECOA.

While the text of the notice appears innocuous enough, there is one subtle difficulty with which you should be familiar. As you know, the name and address of the appropriate federal enforcement agency must be listed in the notice. The list of enforcement agencies and their respective areas of enforcement authority are set out in Appendix A to Regulation B on page 168 of your handbooks. For creditors subject to enforcement authority of the Federal Trade Commission, there may be a problem in printing the ECOA notices. Appendix A contains the following requirement: "Lenders operating on a local or regional basis should use the address of the FTC regional office in which they operate." Thus, creditors operating on a nationwide basis may use the Washington, D.C. address, and, read literally, retailers and others who are not "lenders" may do the same. However, a local or regional "lender" must use the FTC regional office address. If a lender's region should stradle two or more FTC regional office territories, presumably, different addresses must be used within the respective FTC regional office territories.

Finally, if a creditor is planning to establish or participate in a "special purpose credit program," and if that creditor is a "for-profit organization," then it must prepare a *written plan* that (1) identifies the class or classes of persons that the program is designed to benefit, and (2) sets out the procedures and standards for extending credit under the program. This written plan must be prepared before the program is commenced, although there is no requirement that a copy of it be filed with any enforcement agency.

Procedures and activities which require monitoring.

New 202.9(a)(1)(iv)

Under the revised regulation, *counter-offers* made by creditors for differing amounts or terms from those requested by applicants must be scrupulously documented. In the first place, if a counter-offer is used or expressly accepted, it is not "adverse action," and does not trigger the various notices which that entails. Secondly, the mailing or delivery of the counter-offer begins the tolling of the 90-day period during which notification of action taken must be made in connection with the counter-offer. For these two reasons,

202.9(a)(1)(iv) pg.163

creditors engaged in making counter-offers must institute a procedure to document (1) the fact that a counter-offer was made; (2) the terms of that counter-offer; (3) the date upon which it was mailed or delivered to the applicant; and (4) use or express acceptance of the counter-offer. While the regulation is silent with respect to sales finance activities where the counter-offer is generally made to the dealer rather than directly to the applicant, those engaged in sales financing should use the date of delivery or mailing of the counter-offer to the dealer as the beginning of the 90-day period. However, sales financers should establish a procedure to monitor dealers and be sure that dealers relay the terms of the counter-offers to applicants.

New 202.2(c)(2) pg.156

A refusal to extend credit at a point of sale or loan in connection with the use of an account is not "adverse action" if the credit requested would exceed a "previously established credit limit" on the account. The Statement of Basis and Purpose which accompanied the regulation made it abundantly clear that a "previously established credit limit" was just that—a credit limit which was preexisting. Therefore, creditors must either institute a program of assigning credit limits to individual accounts or adopt a procedure to comply with the adverse action procedures for every open end credit turn-down at point of sale, except a turn-down based on inactivity, default or delinquency.

New 202.2(f) pg.156

A "completed application for credit" is defined as meaning one in which the creditor has received all the information which the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested. This will require creditors to institute a documentation program, showing the dates upon which each portion of that information is received. The 30-day period during which notification of action taken must be given to the applicant begins to run on the day the last portion of such information is received.

Creditors are also required to notify applicants where information which can be supplied by an applicant is incomplete. Therefore, a program of internal monitoring of all application forms must be instituted to be sure that a notice is sent to each applicant whose application form is incomplete with respect to information

New 202.9(a)(1)(iv)

the applicant can supply. This is a most important monitoring procedure, because there is no exception in the regulation protecting a creditor from penalty under this section for "inadvertent error."

In connection with sales finance activities, an assignee is not a creditor regarding any violation committed by another creditor unless the assignee "knew or had reasonable notice" of the act, policy, or practice that constituted the violation. This means that any sales financer which participates in the decision to extend credit must institute a program of carefully reviewing any act, policy, or practice of a dealer *made known* to the sales financer. It does not require the sales financer to go out and collect and study the credit practice manuals of each dealer, but it does require a sales financer to act on the basis of actual knowledge about a dealer's acts, policies and practices.

New 202.2(t) pg.157

In order for an empirically derived credit system (i.e., a credit scoring system) to be "demonstrably and statistically sound," it must be periodically revalidated as to its predictive ability and adjusted as necessary to maintain its predictive ability. For this reason, any creditor using a credit scoring system must establish a program of periodic revalidation for each such system in use, using "appropriate statistical principles."

202.5(a) pg.159

It should be unnecessary at this time to remind creditors that they may not discourage an applicant from making or pursuing an application on account of any prohibited basis, because creditors have been subject to that rule with respect to sex and marital status since October 28, 1975. However, many creditors continue to violate this rule—either openly or subtly. Such remarks as, "Oh, you're one of those," when made to a female applicant for a loan or an account in her own name, is probably a violation of this provision in the regulation, and creditors should redouble their efforts to train personnel not to make such remarks and to monitor that training program.

New 202.7(c)(2)

Under the existing regulation, a creditor, on the basis of a change in marital status, may require reapplication where open end credit had been granted to an applicant based on income earned solely by the applicant's spouse. *Under the revised* regulation, upon a change in an applicant's marital status, reapplication may be required only where the credit granted was based on income earned by the applicant's spouse *and* where the applicant's income alone at the time of the original application would not support the amount of credit currently extended. Accordingly, creditors must institute a policy change with respect to reapplications and monitor compliance with the new restriction. That is, reapplications can only be requested after a review of the original application and a determination that the applicant's income at the time of the original application would not support the current account balance.

With respect to credit life, accident, health or disability insurance, the revised regulation prohibits a creditor from refusing to extend credit or from terminating an existing account because such insurance is not available on the basis of the applicant's age. This provision goes much further than the Truth in Lending Act and Regulation Z which merely require a creditor to include in the finance charge the amount of the premium for any such insurance. This provision absolutely prohibits a creditor from denying credit because the insurance is not available based on age. Accordingly, creditors which *require* credit insurance must reevaluate their criteria so as not to violate this new provision. Any such reevaluation must, of course, be followed by a program designed to monitor compliance with this provison.

Restated 202.9 pg.163

Perhaps the most important monitoring system a creditor will be forced to implement under the new regulation is that necessary to be sure that all notifications are properly and timely given. As previously discussed, a creditor must notify an applicant of action taken within

- Thirty days after receiving a *completed application*;
- Thirty days after taking adverse action on an *uncompleted* application;
- Thirty days after taking adverse action regarding an *existing account*; and
- Ninety days after the creditor has notified the applicant of a *counter-offer* to grant credit other than in substantially the amount or on substantially the terms requested by the applicant, if the applicant during that 90-day period has not expressly accepted or used the credit offered.

Notification of approval of an application may be express or implied where, for example, an applicant receives a credit card, money, or property in accordance with the application. *Notices of adverse action must be in writing*. A procedure must be instituted and carefully monitored to be sure that, in connection with each adverse action, written notification is given. This should probably take the form of a log showing, with respect to completed applications, the date upon which the last of the necessary information was received, the action taken, and the date on which the notification was mailed or delivered. Similar logs should be kept in connection with other adverse action.

Any notice of adverse action must contain a statement of the action taken and include the Equal Credit Opportunity Act notice. In addition, it must contain either a statement of specific reasons or a disclosure of the applicant's right to a statement of specific reasons. If the applicant requests such a statement within 60 days after notification, the creditor must supply those reasons within 30 days after the request is made.

This, too, will require monitoring—logging in the requests and logging out the statement of reasons. In any event, the first disclosure to the applicant must include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained and, if the creditor chooses to provide that statement of reasons orally, the notification to the applicant must also include a statement that the applicant has the right to have any oral statement of reasons confirmed in writing within 30 days after written request for confirmation is received by the creditor. In this latter case, if reasons for adverse action are furnished orally, the creditor may institute still another system for monitoring compliance—logging in the written requests and logging out the written confirmations.

New 202.9(b)(2)

In this connection, creditors using a credit scoring system *may not* simply disclose as a reason for adverse action that the applicant failed to achieve the minimum qualifying score. Creditors must isolate and disclose the specific reason or reasons for the adverse action. In a credit scoring system, this will probably involve disclosure of one or more of the characteristics in which an applicant received a "low" score.

Although a creditor is protected against penalty for violation of the records retention provisions if caused by "inadvertent error," that does not relieve a creditor from maintenance of procedures reasonably adapted to avoid any such error. That is, a creditor must institute and monitor two distinct recordkeeping systems: The first system relates to *action taken* on an application, and the second system relates to *adverse action*, other than in connection with an application.

With respect to action taken on an application, a creditor must retain either the original or a copy of

- Any application form;
- Any information required to be obtained to monitor compliance with Regulation B *or other similar law*;
- Any written or recorded information used in evaluating creditworthiness not returned to the applicant;
- Any notification of action taken or statement of reasons for adverse action (or, if furnished orally, any notation or memorandum of them); and
- Any written statements submitted by an applicant alleging violation of the act or regulation.

With respect to adverse action other than in connection with an application, a creditor is required to retain for 25 months the original or a copy of

- Any written or recorded information concerning the adverse action; and
- Any written statement submitted by the applicant alleging violation of the act or regulation.

Copies permitted to be kept in lieu of the original include carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any accurate information retrieval system. A creditor need not keep a written copy of the document if it can regenerate the precise text of the document upon request.

Not only will the foregoing records retention requirements involve monitoring the retention of information, it will also require monitoring the destruction of records after the retention period has expired. Otherwise, creditors will be literally inundated with out-of-date records.

However, where a creditor has received actual notice that it is under investigation by an enforcement agency or is subject to an enforcement proceeding, or has been served with a notice of civil action filed, that creditor must retain all of the required information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court. Although the regulation is not entirely clear on this point, presumably it means that all information with respect to all applicants and/or accounts must be kept—not just those involved in the enforcement proceeding or litigation.

In summarizing these areas in need of procedural reevaluation or change, I have not discussed any of the credit reporting requirements imposed under the new regulation which become effective June 1, 1977. Those changes are extensive, but they will be covered in detail later in the program in connection with credit reporting.

AN OVERVIEW OF FAIR CREDIT REPORTING ACT

Begins on pg.104

FTC Interpretations Begin on pg.109.

Consumer Credit Reporting was passed as an amendment to the Consumer Credit Protection Act with an effective date of April 25, 1971. Its short title is the Fair Credit Reporting Act.

Compared to the Fair Credit Billing Act and the Equal Credit Opportunity Act, the FCRA is a fairly simple and straight-forward law. Because Congress granted only enforcement power, and not regulatory power to the Federal Trade Commission in administering the law, consumer reporting agencies and creditors alike have been able to understand its requirements, and to set up compliance procedures without undue difficulty. Such questions as have arisen as to the specific intent of the law in certain instances have in the main been clarified through informal staff opinion letters from the FTC.

The FTC has also exercised its authority on one occasion (February 12, 1973) to issue official binding interpretations. These interpretations can be found on page 109 of your manual. We recommend that you review these interpretations once again to be certain you fully understand their requirements.

For credit grantors the following are key considerations in complying with the law:

Avoid Acting as a Consumer Reporting Agency

There is nothing in the law which would cause a credit grantor to hesitate to provide his own ledger experience about a consumer to a credit bureau as long as that information is accurate. This type of exchange is not considered a consumer report.

However, suppose ABC Department Store receives a call from XYZ Finance Company about a consumer. If ABC Department Store tells XYZ Finance of the experience reported by Everyman's Hardware, a third credit grantor, that information becomes a credit report, and ABC Department Store is considered a credit reporting agency.

XYZ Finance Company must then tell the consumer, if it rejects him/her, the name and address of ABC Department Store which provided the information. ABC Department Store must then be prepared to interview the consumer, disclose all information about him/her in their files and satisfy a whole series of other requirements.

Unless you, as a credit grantor, are prepared to do all the interviewing, notifying, correcting, record keeping, etc., leave the credit reporting to the credit reporting agencies and give out only your own factual ledger experience about consumers.

A simple "in house" charge authorization on an existing credit card or charge account, by a credit department of a store or its branch, is not a consumer report and is not affected by the law.

Credit grantors who discount consumer installment contracts through a third party must take particular caution to comply with the law. The store which offers the consumer's contract to a bank or finance company must inform the consumer of the name and address of the bank or finance company. The bank, or finance company, if it denies the loan, must notify the consumer as required by law.

Legal Use of Credit Reports

Credit reporting agencies are limited to providing credit reports to users for specific purposes and are required to have credit grantors certify that the reports will be used only for those purposes. This is generally accomplished by a signed contract. The credit bureau must verify the purpose for which a credit report will be used before a report can be furnished. Therefore, an application to use the credit bureau could take some time to process.

Credit reports may be issued if they are to be used for extending credit, review or collection of an account, employment purposes, underwriting insurance or in connection with some other legitimate business transaction such as an investment or partnership, etc.

It is important that the credit grantor identify each request for a report to be used for employment purposes when each such report is ordered, because a credit bureau has certain additional responsibilities when issuing employment reports.

How Long Adverse Information Can Be Used

As a basic rule, no adverse information over seven years old can be included in a credit report. Straight bankruptcies may be reported for 14 years.

The only time these limitations do not apply is when the report is for a credit transaction or life insurance policy over $50,000 or when an employment report is for an annual salary over $20,000.

When Credit is Denied Based on a Consumer Report

Under the law, it is mandatory for the credit grantor to provide the consumer with the name and address of a credit bureau if the consumer is denied credit based wholly or partly on information from that credit bureau. The law does not require the consumer to request this information. However, the credit grantor has the option of providing the information about the credit bureau orally or in writing.

The recommended procedure is to have a preprinted form with fill-in spaces for the name of the consumer and the name and address of the credit bureau.

You are not required to give any specific information to the consumer as to what the report contains, and indeed your agreement with the credit bureau will usually forbid you to make this kind of disclosure. If the consumer requests an interview at the credit bureau, all of the information in his file will be disclosed. Of course, if the credit report had no bearing on your decision, you should explain this to the consumer.

The Consumer's Right to Know

Whenever a credit grantor denies credit based on information from a source or sources other than a credit bureau (such as a direct clearance from another credit grantor), you must inform the consumer, at the time of the denial, that he has a right to request in writing, within 60 days, the nature of the information on which the rejection was based.

Although the law does not require the credit grantor to disclose to the consumer the source of the information received in a direct inquiry, the intent of the law is that the consumer must be given enough facts to be able to refute or challenge the accuracy of the information. Credit granters would be well advised not to accept any direct ledger information from a source that is unwilling to be identified to the consumer.

Credit Grantor Liability

Any credit grantor who is found to have willfully failed to comply with a requirement of the Fair Credit Reporting Act can be sued for actual damages, unlimited punitive damages and legal fees. If a credit grantor is found to have negligently failed to establish reasonable procedures to comply with all requirements of the law, he can be sued for actual damages and legal fees.

Penalty for Fraudulently Obtaining a Credit Report

Just as the law places a heavy responsibility on the credit bureau officers or employes not to give out a credit report willfully to an unauthorized person, it also places the same responsibility on everyone else not to obtain information under false pretenses.

Anyone, a credit grantor, news reporter, or consumer who obtains a consumer credit report under false pretenses is subject to a $5,000 fine or a year in prison, or both.

How the Law Treats Special Investigations

An investigative consumer report is one that contains information on a consumer's character, general reputation, personal characteristics or mode of living and is obtained through personal interviews with neighbors, friends, associates of the consumer or others who might have such knowledge.

Most credit bureaus do not generally compile these reports and few credit grantors ever have need for them. They are usually requested for insurance purposes.

Sometimes you may order an employment report which might contain this type of information. When this occurs, you must notify the prospective employe in writing within three days after ordering the report that the report was requested and will include information about his character, mode of living, etc., and that he has a right to request additional information about the investigation.

If the prospective employe makes a written request for additional information, you must, within five days, accurately disclose the nature and scope of the investigation in writing.

This must be done whether the person is employed or not. These notifications do not have to be made if the consumer has not specifically applied for a job and the employer is simply screening an individual whom he might recruit for a position.

Advance notice to the prospective employe does not need to be given when the employer orders a credit report for employment purposes. But you must notify the reporting agency of your intention to use the report for employment purposes. If you reject the applicant, he must be notified in the same way you would notify a rejected credit applicant.

WHAT CREDIT BUREAUS NEED TO KNOW ABOUT THE EQUAL CREDIT OPPORTUNITY ACT (ECOA)

(IMPORTANT NOTE: Manual Page 112—Sample #1 becomes invalid March 23, 1977.)

Regulation B, issued by the Federal Reserve Board to implement the Equal Credit Opportunity Act, provides do's and don'ts for all creditors on how a credit grantor must avoid discrimination in such matters as taking, considering, accepting or denying credit applications. In so doing, the regulations have a definite effect on the relationship between creditors and credit bureaus. However, in considering the ECOA and Regulation B, it must always be kept in mind that the ECOA grants no authority to regulate credit bureaus and the regulations don't attempt to do so. When in doubt as to any activity, a credit bureau should consider whether or not it is in compliance with the Fair Credit Reporting Act or other applicable laws, such as state laws, before proceeding.

202.10 pg.164

Because the ECOA regulates the manner in which creditors may furnish information to credit bureaus and the kinds of information creditors can consider in evaluating an application, the operation of credit bureaus is affected by Regulation B.

On Dec. 29, 1976, the Federal Reserve Board released final regulations revising Regulation B implementing both the original ECOA on sex and marital status and the 1976 amendments on age, race, national origin, etc. The original regulation on sex and marital status has had, and will continue to have the greatest impact on credit bureaus. While the regulations on age, race, etc. do not alter credit bureau reports, the reporting requirements for accounts used by married persons will significantly affect credit bureau file structures and bookkeeping procedures.

In interpreting and considering the regulations, it is important to keep in mind the main purposes of the law. In the original Act these were to prevent credit discrimination against women—especially married women, divorcees and widows who traditionally have had more difficulty in establishing their separate credit identities and credit worthiness than have single women. Additionally, the 1976 amendments to the Act have expanded protection against credit discrimination to include age, religion, race, color, national origin, receipt of public assistance, and exercise of consumer credit protection rights. Credit bureau reports have not included facts relating to any of these factors with the exception of age and occasionally the fact of public assistance as a source of income. Age and source of income can continue to be reported by credit bureaus, but these are restrictions on the *use* which may be made of this information by credit grantors.

Pages 105-107

Although the ECOA does not directly regulate credit bureaus, Section 607(b) of the Fair Credit Reporting Act requires a credit bureau to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." Therefore, it is the duty of credit reporting agencies to conform their credit reports so that the individual credit histories of married consumers are distinguishable when that information is available.

In spite of the fact that the regulations impose a responsibility on creditors to report information in a certain manner about each spouse, the regulation *does not* impose any requirement on how credit bureaus store the information received. The regulation *does not require* credit bureaus to establish separate files for each spouse although the net effect of the regulation might result in separate files being created.

In the case of manual credit bureau operations, it may be possible to avoid the necessity of physical separation of a file that has been maintained as a "family file" through liberal cross-indexing, except in certain instances.

To illustrate, the manual credit bureau maintains a family file on John A. Jones, wife, Susan. When the credit bureau receives an inquiry in the name of Susan Jones, showing that she is applying for a separate credit account, the credit bureau should at that point create a cross-index reference from Susan to John A. or it may elect to establish a separate file under Susan's name. New credit accounts that can be identified as belonging to Susan alone should be so identified within the family file, or set up in the separate file. In addition, any credit accounts that can be identified as being shared between husband and wife or the joint liability of husband and wife should be so identified within the family file and included within the separate files if these exist.

From the credit bureau's point of view, compliance with the law centers on this important principle: In furnishing information on an applicant, the bureau must include all information which relates to that applicant either individually or in conjunction with a joint account or a shared account with his or her spouse. Conversely, it must exclude any information which relates solely to a non-applicant spouse.

The above means that in a manual credit bureau, if the cross-referencing system is effective, the credit reporting data could be filed under the name of either spouse, and thus could be accessed under either name. Thereafter, if a creditor inquiries under both names, and indicates that both applicant and spouse will share in the account privileges, the entire file can be given (individual accounts of each plus joint or shared accounts). But if the creditor indicates that either Susan or John is making application for a separate account, the credit bureau will need to screen out any information relating solely to the non-applicant spouse.

As a practical matter during a transition period (especially in the manual credit bureau) much of the credit history in the file will be undesignated as to whether the account is his, hers, or shared. If the information is updated prior to the release of the report, the bureau can inquire of its sources to try to identify each ledger experience as being individual or joint. But when furnishing unrevised information from the file current interpretation is the bureau may furnish the undesignated ledger information when either or both spouse is applying for credit. (The Federal Trade Commission is expected to issue a staff advisory letter on "undesignated information.")

In that event, if the applicant is refused, he or she will later have an opportunity during the credit bureau interview under FCRA procedures to challenge any items for which he or she denies responsibility. The bureau must then reinvestigate such items and fulfill all the requirements of Section 611 of the FCRA.

In the case of automated credit bureaus, the credit history information which is received directly on tape from creditors must, beginning June 1, 1977, be identified as to "whose account." The regulation provides that in furnishing information to consumer reporting agencies, a creditor must furnish the information in a way to enable them to provide access to information about shared or joint accounts in the name of each spouse.

In making the transition until the eventual day when all credit history information in file can be identified as to whose account it is, the automated bureau has special problems. Many of its subscribers take file information by means of an off-premises terminal. The bureau must adapt its system to prevent the issuance of a report for an impermissible purpose. When the subscriber inquires on Susan Jones who has applied for a separate account, which her spouse will not be permitted to use, the user is not entitled under the FCRA to any information relating solely to John, the non-applicant spouse. The automated bureau consequently must find a way to set up a separate file on Susan. This file should contain all the information that relates solely to her plus any information as to accounts she shares with John. The automated bureaus are deep into reprogramming to meet this contingency, but it is likely that until the system can begin functioning on all cylinders, there will be an excess number of "no records" encountered by a married women wishing a separate account in which her husband does not share.

It should be noted that there is a difference between issuing a report for an impermissible purpose and providing information which the creditor is not permitted to use. As explained above, issuing a report or information on a non-applicant and non-user spouse would be a violation of the FCRA (sec. 604). However, there will be times when a credit report may contain information which a creditor is not allowed to ask for from the applicant, such as marital status. The ECOA regulation says that a creditor is not in violation of the law for receiving "prohibited" information from a credit bureau as long as the creditor doesn't use it.

Separate files (as opposed to cross-indexing) should always be created in some conditions. This should occur whenever the credit bureau receives an affirmative request from either spouse, or when the bureau learns of a divorce or legal separation. In the case of a widow, her wishes should prevail as to the name under which her credit record is to be carried. Many widows prefer to continue to be known as "Mrs. John A. Jones," but many will wish to revert to "Susan Jones."

Creditors should be reminded that although the regulation prohibits their use of information pertaining solely to a non-applicant spouse (except in community property states), there is no prohibition on receiving and retaining such information from a credit reporting agency. The applicant is given a specific right to show that any given item of credit history does not reflect his or her willingness or ability to repay. Contrarywise, the applicant is also given the right to show that any item not in his or her name does reflect his or her credit worthiness.

Also, the creditor is permitted to ask on the credit application, where the applicant lists credit references, the name in which each reference is carried.

In addition, on the credit application the creditor can ask the husband's name in all cases where:

1. The non-applicant spouse will be permitted to use the account, or will be contractually liable on the account.
2. The applicant is relying (wholly or partly) on the non-applicant spouse's income.
3. The applicant is relying on alimony, child support, or maintenance payments from a separated or divorced spouse. (Accessibility to that file, however, can be obtained only with the written consent of the divorced or separated spouse.)
4. The applicant resides in a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Commonwealth of Puerto Rico).
5. Secured credit is being requested.

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Credit bureaus should be immediately asking creditors to identify the type of account being applied for. They should record this information with the inquiry. This will enable the bureau to properly identify the type of account—basically whether his, hers, or theirs—in subsequent reports. It will also enable the bureau in subsequent consumer interviews to distinguish whether previous reports were furnished on John or Susan.

0 Undesignated (to be used only until all accounts can be properly designated)
1 Individual Account for Individual Use
2 Joint Account Contractual Liability
3 Authorized user spouse (shared account)
4 Joint (shared account when it is impossible to distinguish between #2 and #3)
5 Co-Maker Account (with someone other than spouse)
6 "On behalf of" Account
7 Maker (No spouse relationship)
8 Co-Maker

As time passes and more credit bureau ledger information is designated, credit bureaus should review their consumer interview procedures. Caution should be exercised in disclosing information to one spouse that relates solely to the other spouse even though a turn down resulted from a joint credit application. Before disclosing the information about one spouse to another, it might be wise to obtain the permission of the spouse who is not present for the interview.

FAIR CREDIT BILLING (FCBA) — REGULATION Z DUTIES OF CREDIT BUREAUS

226.14(e) pg.28

Although the FCBA doesn't directly cover credit reporting agencies or impose specific legal requirements on them, it does lay down certain do's and don'ts for creditors in the way they report credit information. Information concerning disputed accounts must be accurately reflected by the credit bureaus, which is required by the Fair Credit Reporting Act (FCRA) to follow "reasonable procedures" to be certain that its records and reports on consumers are maintained to "assure maximum accuracy."

In order to better understand the Fair Credit Billing Act as it relates to handling disputed billing statements, we must first keep in mind a few key definitions and requirements which will "trigger" the required responses. There is a very exact definition in Regulation Z of what qualifies as a "proper written notice of a billing error" from a customer (Sec. 226.2(cc)).

pg.4

To qualify for the protections provided by the Fair Credit Billing Act, a consumer must make a proper written notification of a billing error within 60 days of the creditor's mailing or delivering the bill containing the alleged error.

The law prohibits a credit grantor from reporting a disputed *amount* as being *delinquent* to a credit bureau or any other third party. (A common misconception is that the law prohibits the reporting of an account in dispute to a credit bureau or any other third person. This is not true.) This is treated specifically in Sec. 226.14(e)(1) where footnote no. 19 says "nothing in this paragraph prohibits a creditor from reporting a disputed amount or account as being in dispute."

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Credit bureau managers and personnel should study Sec. 226.14 of Regulation Z (Billing errors— resolution procedure) in its entirety, to know how the bureau must respond when a creditor reports that an account is in dispute or that a previously reported dispute has been resolved. If a credit bureau receiving such information failed to have reasonable procedures to notate the consumer's credit record promptly and properly, it would be in violation of Sec. 607(b) of the Fair Credit Reporting Act.

pg.105

Here are areas in which the credit bureau should adopt reasonable procedures to insure accuracy in maintaining and reporting credit histories with regard to dispute:

Credit bureau managers and personnel should study Sec. 226.14 of Regulation Z (Billing errors— resolution procedure) in its entirety, to know how the bureau must respond when a creditor reports that an account is in dispute or that a previously reported dispute has been resolved. If a credit bureau receiving such information failed to have reasonable procedures to notate the consumer's credit record promptly and properly, it would be in violation of Sec. 607(b) of the Fair Credit Reporting Act.

pg.105

Here are areas in which the credit bureau should adopt reasonable procedures to insure accuracy in maintaining and reporting credit histories with regard to dispute:

1. When you receive a first-time ledger experience from a creditor who indicates he has been notified of a billing error dispute in accordance with the requirements of Sec. 226.2(cc), the creditor can report to you the full credit history, except that the amount disputed may not be reported as delinquent.

   pg.4

   This means the creditor can report Dated Opened, Date of Last Payment, Highest Credit, Balance Owing (including the disputed amount), Whose Account, and an indicator "DRP" which the bureau will interpret to read *"Dispute—Resolution Pending."* (ACB suggests that the bureau also show the manner of payment as "0" (Zero) plus the dispute indicator.)

   Since this information is new to your file, your duty is only to show that the account is in Dispute, and be sure that the account in dispute is not shown as delinquent, and that any adverse Manner of Payment or other adverse information reported is not related to the amount in dispute.

2. When a creditor supplied you with an item of credit history which *updates* a ledger experience *previously* reported to you, and the creditor indicates he has been notified of a *billing error dispute* according to Sec. 226.2(cc) you must fulfill the same procedure indicated in (1) above.

   pg.4

3. When a creditor, after reporting, later reports (in narrative or by code indicator, "DIS") that the dispute has been resolved, he should then report the correct balance and correct past-due balance (if any). (The bureau should then change the file to eliminate reference to the dispute.) The creditor should make sure that the MOP or Times Past Due columns do not penalize the consumer for not paying while the dispute was being resolved.

4. When a creditor has received proper written notice of a billing error, has investigated the matter, and has written to the consumer notifying him of the reasons why the creditor believes the amount disputed was correct (Sec. 226.14(a)(2)(iii)) and if the consumer within 10 days then sends him another written notification still disputing the amount, the creditor's procedure is spelled out in Sec. 226.14(e)(2). After his first written notice to the consumer saying in effect, "Our investigation shows that our statement was correct, and here's why," he must mail or deliver to the consumer written notification of the amount owed with respect to the disputed item. If the disputed amount then still remains unpaid, the creditor can then report it as delinquent, if he so chooses, but must also report that it is still disputed. The bureau could then notate the item just as "Disputed." At the same time, the creditor must notify the consumer in writing the name and address of the bureau and any other person to whom he is reporting the disputed amount as being delinquent.

pg.27
pg.28

5. When an account or amount has been reported by a creditor as delinquent but still disputed (as in paragraph 4 above), and subsequently the dispute is *finally resolved,* the creditor must report this fact "promptly" in writing to the bureau and to anyone else who received the information that the account was delinquent, but still disputed.

pg.29

6. This billing error resolution procedure applies only (as per Sec. 226.14(g)) to "open end" credit, but the Act defines this as including *any* consumer credit extended in which a credit card is involved. This means that a card issuer who grants 30-day credit only, with full balance being due each 30 days and no finance charge, is subject to the Act. (Example: A travel card or a department store which doesn't have revolving credit but issues a credit card.)

7. What about disputes that are not regulated under the FCBA? The creditor is not required to treat such disagreements in any formal or legal manner, but for practical purposes will be anxious to settle them, amicably, if possible. Thus some creditors will arrange to flag such *"informal disputes"* when reporting them to the bureau.

   Remember that the FCRA requires the credit bureau to reinvestigate "Disputes" when the consumer notifies the bureau that he challenges the accuracy or completeness of an item in his file. This refers to any kind of dispute, since the FCRA doesn't specifically define the word. It is recommended that the credit bureau continue to follow reasonable procedures to recheck such items, and if the creditor still maintains the item is accurate, report it as "Disputed."

pg.26

8. Note that there is another type of FCBA dispute which covers *any* credit card issuer. It is described in Sec. 226.13(i) of Regulation Z and does not relate to a *billing error dispute* as covered in Sec. 226.14. It covers disputes as to the *quality of goods ("property") or services* purchased by use of a credit card, usually a bank card or other third party card.

   Unpaid balances in dispute regarding property or services purchased may not be reported to the credit bureau or anyone else as *delinquent* until the dispute is settled or a judgment is rendered.

   When reporting such a disputed account to the credit bureau, a creditor should report it as "Dispute— Resolution Pending" with no delinquency being shown as to the amount in dispute.

9. Definitions of phrases recommended to be used by credit bureaus: DRP ("Dispute-Resolution Pending")—Consumer has given proper written notice of a disputed billing error or merchandise/services dispute to creditor.

It is necessary, however, for all collection agency members to have reasonable procedures to properly handle any notice of dispute which they may receive from a consumer on an account, even though that dispute does not trigger the provisions of the FCBA. Collection personnel should be instructed not to seek payment of any amount in dispute unless instructed to do so by the creditor.

REGULATION Z — TRUTH IN LENDING

After more than eight years of deliberation in various Committees and Houses of Congress, Congress passed and President Johnson signed the Truth in Lending Act in May, 1968. When originally introduced by Senator Paul Douglas (D—IL) in early 1960, it was a relatively short, uncomplicated bill requiring disclosure of the finance charge and the "simple annual rate of interest" in closed end transactions—and not much more. In the ensuing eight years, it picked up many amendments and technical disclosure provisions with the result that it was converted from a bill requiring disclosure of the "cost" of consumer credit to a bill requiring disclosure of the "terms" of consumer credit transactions.

The Board of Governors of the Federal Reserve System was given the authority under the Act to write regulations to carry out the purposes of the Act, and on February 10, 1969, published Regulation Z. Since that time, the Truth in Lending Act has been amended five times by Congress and the Board has amended Regulation Z scores of times. Our discussion today will be based upon the latest amended versions of both the Act and the Regulation.

When the Truth in Lending Act was first passed, it consisted of three chapters and applied generally to all consumer credit transactions and advertisements. Consumer credit is now defined to mean:

226.2(p) pg.3

> Credit offered or extended to a natural person, in which the money, property, or service which is the subject of transaction is primarily for personal, family, household, or agricultural purposes. "Consumer loan" is one type of "consumer credit."

All consumer credit transactions originally covered remain covered in the current version of the Regulation. However, as amendments were added to the Truth in Lending Act, it was made to apply to classes of transactions not originally covered.

226.13(a) pg.25

1. The unsolicited credit card amendments were added on October 26, 1970, to prohibit any card issuer from furnishing unsolicited credit cards. In the same amendment liability for unauthorized use of a credit card was limited to $50 provided certain notices to cardholders were so made. Certain credit cards and credit card transactions also require notices irrespective of their involvement with "consumer credit." For example, credit cards representing 30 day non-revolving accounts were subject to the unsolicited credit card and limited liability provisions although the "consumer credit" rules were not extended to cover 30 day accounts.

226.14 pg.29

2. The Fair Credit Billing Act amendments were added as Chapter 4 of the Truth in Lending Act on October 28, 1974, effective October 28, 1975. Its provisions applied to all open end credit as well as all other credit extended on an account by use of a credit card. Thus, 30-day accounts with credit cards were made subject to the billing error resolution procedure, even though they did not represent "consumer credit" as defined in the Regulation.

The latest addition to Truth in Lending came on March 23, 1976, with the enactment of the Consumer Leasing Act— Chapter 5 of Truth in Lending—which applied to any

226.14 pg.29

> " ... lease or bailment for the use of personal property by a natural person for a period of time exceeding four months and for a total contractual obligation not exceeding $25,000, primarily for personal, family, or household purposes, whether or not the leasee has the option to purchase or otherwise become the owner of the property at the expiration of the lease."

Thus, the Act now covers *non-credit* transactions. Although the statement of Congressional findings in the Consumer Leasing Act refers to " ... a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales," the sweep of the coverage is much broader than transactions which are substitutes for credit. For example, leases of apartment furniture (except those made by the building owner as an adjunct to the lease of an apartment) for a period of longer than four months are covered by the Act, even though such leasing arrangements are not typically an alternative to credit. Only 5% of furniture leases are converted to sales.

Leases, however, are not subject to the consumer *credit* disclosure requirements of Regulation Z. Although similar and just as detailed, the leasing disclosures are different from the credit disclosures in that they are tailored to fit leasing transactions.

By the way of summary, then, the scope of Regulation Z at present is as follows:

1. "Consumer credit" is subject to the provisions relating to (A) disclosure of the terms of a credit

transaction; (B) the right to rescind certain credit transactions involving a lien on the customer's residence; and (C) advertising of consumer credit terms.

2. In addition, open end credit and credit extended on an account by use of a credit card are subject to the provisions relating to the billing error resolution procedure.
3. Unsolicited credit cards are prohibited and the consumer's liability for unauthorized use of such cards is limited to $50.00.
4. "Consumer leases" are subject to the provisions relating to (A) disclosure of lease terms; (B) limitation on liability based on residual value of the leased property; and (C) advertising of lease terms.

Thus, as general statement, the Truth in Lending Act and Regulation Z cover two major areas: consumer credit and consumer leases.

226.2(s)
pg.3

With respect to the *credit* aspects of Truth in Lending, they relate only to *consumer credit,* and to creditors, a term which is defined to mean:

" ... 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, which is payable by agreement in more than four installments, or for which the payment of a finance charge is or may be required."

However, the definition was expanded to include credit card issuers, whether or not payment of a finance charge may be required to require such card issuers to comply with the following:

226.7(a)
pg.11

1. Disclosure before first use of an account of (A) the conditions under which charges other than the finance charge may be imposed and the method by which they will be determined; (B) the conditions under which a creditor may retain or acquire a security interest and an identification of such security interest; (C) the minimum periodic payment required; and (D) furnishing the notice of billing error rights to the customer.

226.7(b)
pg.12

2. The requirement that periodic billing statements be furnished in connection with each account that collectible in which there is an outstanding undisputed debit or credit balance in excess of $1 or with respect to which a finance charge is imposed.

226.7(c)
pg.13

3. The requirement that any such statements furnished include disclosure of (A) the "previous balance;" (B) the amounts and dates of "payments" and "credits" (C) the identification of each transaction; (D) the closing date of the billing cycle, the "new balance" and if a credit balance appropriately identified and a statement of the date by which, or the period within which, payment must be made in order to avoid additional finance charges; and (E) the address used by the creditor for the purposes of receiving billing inquiries, using the caption "send inquiries to."

226.7(b)(2)
pg.13

4. The prohibition against imposing finance charges or other charges unless the creditor mails or delivers the required periodic statement at least 14 days prior to the date that is specified in the statement as being the date by which the new balance must be paid in order to avoid the imposition of a finance charge or other charge.

226.7(c)
pg.13

5. The provisions relating to location of disclosures on the periodic statement.

226.7(c)
pg.13

6. The provisions relating to the furnishing of the semi-annual notice of billing error rights, or, the monthly abbreviated notice.

226.7(f)
pg.14

7. The requirement that in the event of a change in terms of an account, written disclosure of the change must be mailed or delivered to each customer for whom a billing statement must be sent at least 15 days prior to the beginning date of the billing cycle in which the change is to be made.

226.7(g)
pg.14

8. The provisions of Regulation Z relating to the prompt crediting of payments.

226.7(h)
pg.15

9. The provisions requiring a creditor, upon receipt of a payment in excess of the "new balance" shown on a statement either to credit the customer's account with the total payment or credit the customer's account with an amount equal to the "new balance" and refund the excess payment within five business days after receipt. If the creditor credits the account with the full payment, and if the customer requests a refund of the excess in writing, a creditor is required to refund such excess payments of $1 or more within five business days from receipt of the written request.

226.7(i)
pg.15

10. The requirement that holders of accounts existing on October 28, 1975, be furnished a copy of all disclosures not previously furnished (including the full statement of billing error rights) not later than a billing statement is required to be sent for or following the first full billing cycle after October 28, 1975.

226.13(i) pg.25 226.13(j) pg.26 226.13(k) pg.26

11. All of the special requirements for credit card transactions of third party card issuers including (A) the right of a customer to assert all claims and defenses arising out of a credit card transaction against the card issuer with a long list of special provisos to qualify the transaction; (B) prohibit a card issuer from offsetting a cardholder's indebtedness against a deposit account; (C) requiring merchants to transmit credit slips for returned merchandise to card issuers within seven business days after the return is accepted, and requiring card issuers to credit the customer's account within three business days after receipt of the credit advice; and (D) prohibiting any person from offering a cash discount to all customers, including cardholder customers, to induce payment by cash, check, or similar means rather than by means of a credit card, or to require any person who honors the card issuer's credit card to open or maintain an account or procure any service essential to the operation of the credit card plan from the card issuer.
12. Compliance with the billing error resolution procedures required under Regulation Z.

226.2(x) pg.3

"Open end credit" is defined to mean 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;
2. The customer has the privilege of paying the balance in full or in installments; and
3. A finance charge may be computed by the creditor from time-to-time on an outstanding unpaid balance.

226.2(w) pg.3

The "finance charge" is the sum of all charges, payable by the customer, and imposed by the creditor as a condition of the extension of credit, including such charges as interest, time price differential, service charges, transaction charges, carrying charges, loan fees, points, finder's fees, and credit investigation fees. Charges or premiums or credit life, accident, health or loss of income insurance written in connection with a credit transaction are also included in the finance charge unless:

1. The insurance coverage is not required by the creditor; and
2. Any customer who desires such insurance coverage gives specifically dated and separately signed indication of such desire after receiving written disclosure of the cost of such insurance.

Charges or premiums for property damage and liability insurance written in connection with a credit transaction are included in the finance charge *unless* a clear, conspicuous and specific written statement is furnished by the creditor to the customer setting forth the cost of the insurance if obtained from the creditor and stating that the customer may choose the person through which the insurance is to obtained. (Note: If a creditor meets the foregoing requirements the premiums are not required to be included in the finance charge, the cost to be disclosed need only be the cost of the premiums for the term of the initial policy or policies, accompanied by a written statement of the type of insurance and its term.) Premiums for insurance protecting the creditor against the customer's default or other credit loss must be included in the finance charge in all cases.

A late payment, delinquency, default or similar charge is not a finance charge if imposed for actual unanticipated late payment, delinquency, or default. However, when in the ordinary course of business a vendor imposes such charges on accounts not paid in full within the stipulated time period and does not, in fact, regard those accounts as being in default, but continues or will continue to extend the credit and impose charges periodically for delaying payment of such accounts, the charge comes within the definition of "finance charge," and any credit is "open end credit" and the vendor is a "creditor."

226.2(f) pg.2

The "amount financed" in any consumer credit transaction is the net amount of credit of which the customer will have the actual use. For example, in a sale transaction, it includes not only the amount of the purchase being financed (after deducting the downpayment and trade-in), but also taxes, delivery charges, and other fees and expenses included in the credit extended which are not required to be included in the finance charge. In loan transactions, it is the net amount of credit paid to or for the account of the borrower. For example, in a one-year period, $1,000 discount-type loan from which a finance charge of $70 is deducted in advance, the "amount financed" is $930, not $1,000.

In both loan and sale transactions, all "other charges" included in the amount financed (such as credit life insurance premiums excluded from the finance charge) must be itemized.

Disclosures required for open end credit are quite different from the disclosures required for other than open end credit transactions; thus, the emphasis given earlier on the definition of "open end credit." If a transaction does not fit all of the requirements for "open end credit," disclosures for other than open end credit must be made.

For open end credit, certain disclosures are required to be given before the first use of an account (which I will refer to sometimes as "opening disclosures"), and some of those same disclosures, plus others, are required to be given on each periodic statement.

Pg.11

The required "opening disclosures" for open end credit must be given to the customer in a single written statement, which the customer may retain. Those disclosures are found on page 11 of your manual. You may want to review these requirements once again to be certain your procedures are in compliance.

Also, you will want to review the billing error disclosure requirements which are on page 11 of your manual.

In addition to the disclosures which must be made before first use of an account, creditors are also required to furnish periodic statements containing certain disclosures. Those statements are required for any open end credit account for each billing cycle at the end of which there is an outstanding undisputed credit or debit balance in excess of $1 or with respect to which a finance charge is imposed. The disclosures required on these periodic statements may be made on or with the statement and must include each of the following items, to the extent applicable:

226.7, pg.11

1. The outstanding balance in the account at the beginning of the billing cycle, using the term "previous balance," and in the case of a credit balance, an appropriate identification as such.
2. The amount of each transaction.
3. For creditors using a *country club* billing system, either the date of the transaction or the date the transaction is debited to the customer's account; or for creditors using a *descriptive* billing system the date on which the transaction took place, or, until October 28, 1977, if due to "operational limitations" that date is unavailable for billing purposes, the date of debiting the transaction to the account.

226.7(k) pg.15

4. For creditors using a descriptive billing system, a "brief identification" of the property or services purchased, or an identifying number or symbol reasonably unique to the transaction which appears on the sales document given to the customer, or, until October 28, 1977, such identifying information as is "reasonably available." However, if a creditor discloses the identifying number in lieu of the "brief identification" of the property or services purchased then upon receipt of a proper written notification relating to identification of the transaction, it must be treated as an erroneous billing. Effective October 28, 1977, creditors must institute and maintain internal procedures to capture this information. If such information is not available *despite* the maintenance of procedures reasonably adapted to procure such information, beginning October 28, 1977, a creditor may substitute the date of debiting for the date the transaction took place and disclose as much of the other required information as is available and omit any information not available. The absence of the primarily required information must be treated as a billing error upon inquiry by the customer.

226.7(b) pg.12

5. The amounts and dates of "payments" and "credits," and, unless previously furnished, a brief identification of each such "credit." The date of crediting need not be provided if the delay in crediting does not result in the imposition of any finance, late payment or other charges for that billing cycle or a later billing cycle.

226.7(b)(iv) pg.12

6. The amount of any "finance charge," debited to the account during the billing cycle, itemized and identified to show the amounts due to the application of periodic rates or other charges.

226.7(b)(v) pg.12

7. Each "periodic rate" that may be used to compute the finance charge and the corresponding annual percentage rate determined by multiplying each periodic rate by the number of periods in a year.
8. When a finance charge is imposed during the billing cycle, the "annual percentage rate" using that term.
9. The balance on which the finance charge was computed and a statement of how that balance was determined.

226.7(b)(ix) pg.13

10. The closing date of the billing cycle and the outstanding balance in the account on that date, using the term "new balance," and in the case of a credit balance appropriately identified as such.
11. A statement of the date by which payment must be made to avoid additional finance charges.

226.7(b)(x) pg.13

12. An address to be used by the creditor for the purpose of receiving billing inquiries from customers, preceded by the caption, "send inquiries to."

226.7(b)(2) pg.13

If the terms of an open credit plan permit the customer to repay any portion of the "new balance" without incurring an additional finance charge, the periodic statement must be mailed or delivered at least 14 days prior to the date specified in the statement as being the date by which payment must be made in order to avoid additional finance charges, unless because of an act of God, war, civil disorder, natural disaster or strike.

226.7(a)(9) pg.11

Creditors are required to mail the long-form statement of billing error rights. These semi-annual statements must be sent not less than five nor more than seven months after the month in which the last preceding semi-annual statement was sent. In this connection, a creditor is required to select the two billing cycles in any twelve-month calendar period for the mailing or delivery of the long-form statement of billing error rights. A creditor may, of course, furnish these statements more frequently than semi-annually.

226.7(b)(5) pg.14

As an alternative to the semi-annual statements, a creditor may mail on or with each periodic statement a short-form statement of billing error rights. A copy of the long-form statement of billing error rights must be sent upon a customer's request *and* upon receipt of each billing error notice mailed or delivered to the creditor by a customer.

Payments on open end credit card accounts must be posted as of the date received by the creditor. If a creditor fails to post a payment in time to avoid additional finance charges, the creditor must adjust that customer's account during the next billing cycle by crediting the amount of those finance charges.

A creditor may specify on or with the periodic statement reasonable requirements with respect to form, amount, manner, location and time for receipt of payments. If no particular hour of the day has been specified by the creditor, payments received prior to the close of business must be credited as of that date. If no location at which payment must be paid has been clearly specified, payment at any location where the creditor conducts business must be credited as of the date payment is presented.

If a creditor accepts payments at locations other than those specified, the creditor is required to credit the customer's account promptly, no later than five days from the date of receipt—provided the creditor clearly discloses to the customer on the periodic statement that there is the possibility of such a delay.

If a delay in crediting a payment will not result in the imposition of any finance charges, or other charges, payments need not be credited as of the date of receipt. However, they must be credited "promptly."

226.4(i) pg.6

Under Fair Credit Billing, effective October 28, 1975, creditors are permitted to offer or allow a discount for cash payment and the amount of the discount is not a finance charge for Truth in Lending purposes, if:

1. The discount does not exceed five percent of the cash price;
2. The discount is available to all prospective buyers: and
3. The availability of the discount is "clearly and conspicuously disclosed" by a sign or display posted at or near each public entrance to the place of business where the discount is offered and at all locations within the place of business where a purchase may be paid for.

If a discount of greater than five percent is offered, the entire amount of the discount will be a "finance charge" for Truth in Lending purposes.

In 1976, Congress amended the statutory provision relating to cash discounts, effective February 27, 1976. Merchants honoring a credit card are prohibited from imposing a "surcharge" for the use of that card; and discounts of not more than five percent are not to be considered a finance charge under state usury or disclosure laws. Also, a creditor is immunized from civil or criminal liability for any act done or omitted in good faith in conformity with any "interpretation or approval" issued by a duly authorized official of the Federal Reserve System. Regulation Z already provided that surcharges for the use of a credit card must be considered as finance charges. However, the Federal Reserve Board still has not amended Regulation Z to *prohibit* surcharges or to exempt discounts of five percent or less from state usury or disclosure laws. Effective July 30, 1976, the Board did amend Regulation Z to provide that creditors may rely in good faith on "official staff interpretations" and by so doing obtain immunity from civil and criminal penalties.

The final area I want to cover today relating to open end and credit card transactions is the dispute resolution procedure added by the Fair Credit Billing amendments to the Truth in Lending Act, effective October 28, 1975.

Page 2

In order to implement these amendments, the Board added two key definitions to Regulation Z. Please refer to page 2 of your manual for the definition of "billing error."

Page 4

The second key definition added under the Fair Credit Billing amendments to Regulation Z was that defining "proper written notification of billing error." That definition is found on page 4 in your book.

In order for a customer to invoke the billing error resolution procedure, the mistake must fit one or more of the defined billing error categories, and the customer must file a proper written notification of billing error. When such a "proper written notification of billing error" is received, the creditor must send a written acknowledgment to the customer within 30 days after receipt of the notification and resolve the dispute within two complete billing cycles (maximum 90 days) after receiving the notification. If the creditor

has been disclosing the short-form of the statement of billing error rights, the creditor must also send a copy of the full statement of billing error rights with the acknowledgment.

A creditor may "resolve" a billing dispute only by:

1. Correcting the account in the full amount claimed by the customer and notifying the customer of that action in writing; or
2. Correcting the account in an amount different from that claimed by the customer and explaining the change in writing to the customer; or
3. After reasonable investigation, determining that the account was correct and not in need of adjustment and explaining this fact in writing to the customer.

If after reasonable investigation a creditor determines that a periodic statement does not contain an error, the creditor must mail or deliver to the customer a written notification of the amount owed regarding the disputed item. If the periodic statement was found to have contained an error, the creditor must mail or deliver to the customer written notification of the corrected amount owed, and if the plan includes a "free ride," the creditor must allow the customer the same number of days after giving written notification of the corrected amount (in no case less than ten days) for the customer to pay that part of the disputed amount found to be due.

If under the credit card plan the cardholder has agreed to automatic debits to his deposit account for payment of the credit card account indebtedness, creditors are prohibited from making the automatic debit if the "proper written notification of billing error" is received within sixteen days from the mailing of the periodic statement or, if the debit has already been made promptly (in no case more than two business days after receipt of the notice) restore any disputed amount previously deducted.

A customer may withhold payment of that portion of the minimum periodic payment which is related to the amount in dispute, but if after the resolution of the dispute the customer is found to owe all or part of the disputed amount, the creditor may require the customer to make up any deficiencies in minimum periodic payments.

A creditor must credit the customer's account for any amount which the customer was found not to owe, plus finance or late payment charges thereon, as a result of a billing error.

A customer remains obligated at all times to pay any amounts not in dispute, and disputed amounts may be applied against any previously established credit limits. However, an account may not be closed or restricted, nor may the entire debt be accelerated, because a customer has filed a proper written notification of billing error.

A creditor may continue to mail periodic statements which include disputed amounts if the creditor indicates on the *face* of the statement that payment of the disputed amount(s) during the dispute resolution procedure is not required.

During the dispute resolution procedure, a creditor may not report or threaten to report to any third person that the amount in dispute is delinquent. If, despite establishment by the creditor of procedures reasonably adapted to assure compliance with this credit reporting rule, within two days after receiving a notice of billing error, the creditor inadvertently reports a disputed amount as being delinquent, that inadvertent action will not be considered a violation.

If the customer continues to dispute an amount after the creditor has reasonably determined that no error existed, the creditor may not report the disputed amount as delinquent unless the creditor also reports that the amount *or account* is in dispute, notifies the customer in writing of the name and address of each party to whom the creditor is reporting information concerning the disputed amount, and thereafter promptly reports to each such party any resolution of the dispute.

Any creditor who fails to comply with the dispute resolution procedure is subject to all of the civil penalty provisions under Section 130 of the Truth in Lending Act plus forfeiture of the right to collect the amount claimed by the customer to be a billing error and any finance or late payment charges thereon, provided that the total amount of the forfeiture may not exceed $50.00.

226.8, pg.17

Turning now to the specific requirements for credit other than open end, those disclosures differ from the disclosures required in connection with open end credit with respect to both form and content as well as time of delivery. Credit, other than open end, involves only one disclosure.

Section 226.8 of Regulation Z outlines the requirements for disclosures in connection with credit other than open end. We urge you to carefully review these disclosures if you offer other than open end credit to your customers.

If an other than open end credit sale is one of a series of transactions made under an agreement providing for the addition of the amount financed plus the finance charge for the current sale to an existing

outstanding balance, the disclosures 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 and the method of handling unearned finance charges on an existing outstanding balance; and
2. The creditor retains no security interest in any property for which he has received full payment (including finance charges).

For the purposes of this latter requirement, where items are purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same day, the lowest priced shall be deemed first paid for.

If an existing extension of credit is refinanced, or if two or more existing extensions of credit are consolidated, or if an existing obligation is increased, any such transaction is a new transaction subject to new disclosures. In such a refinancing, if any unearned portion of the finance charge is not credited to the existing obligation, that amount must be added to the new finance charge and not included in the new amount financed. However, an increase in an existing obligation to reimburse the creditor for performing the customer's obligation to perfect, protect, or preserve the security (for example, paying the customer's required fire insurance premium) is not considered to be a new transaction for disclosure purposes.

226.8(l) pg.19

In the case of a deferral or an extension of an obligation involving a precomputed finance charge, if the creditor imposes a charge for the deferral or extension, the following items must be disclosed 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.

In connection with extensions of credit other than open end, creditors are not required to furnish periodic statements. However, if a creditor elects to furnish such a statement (other than a delinquency notice, payment coupon book, or billing advice relating exclusively to customer escrow payments), that notice must be in a form which the customer may retain and must include the following disclosures:

1. The annual percentage rate, and
2. The date by which or period, if any, within which payment must be made in order to avoid a late payment charge.

226.9, pg.21

Turning next to the right of rescission, this is one of the few substantive (as contrasted with disclosure and procedural) rights granted under the original Truth in Lending Act.

With limited exceptions (which we will discuss shortly), in the case of any consumer credit transaction covered by Regulation Z in which a security interest is or will be retained or acquired in any real property which is used or expected to be used as the principal residence of the customer, the customer has the right to rescind the transaction until midnight of the third business day following the date of consummation of that transaction or the date of delivery of the disclosures required under Regulation Z, whichever is later, by notifying the creditor by mail, telegram, or otherwise in writing of his intention to rescind. Notification by mail is considered to have been given at the time of mailing; notification by telegram is considered to have been given at the time it is filed for transmission; and any other written notification is considered to have been given at the time delivered to the creditor's designated place of business.

Whenever a transaction is subject to this right of rescission, the creditor must give notice of that fact to the customer by furnishing two copies of a notice prescribed in Regulation Z printed in capital and lower case letters of not less than 12-point bold-faced type. The statement must be separate from the other disclosures and must identify the transaction.

During the three-business-day rescission period, in any transaction other than an extension of credit primarily for agricultural purposes, a creditor may not—

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.

When a customer exercises the right of rescission, the customer is not liable for any finance or other charge, and any security interest automatically becomes void upon rescission.

Within ten days after receipt of a notice of rescission, the creditor must return to the customer any money or property given by the customer to the creditor and must take any action necessary to reflect termination

of the security interest created under the transaction. If the creditor has delivered property to the customer, the customer may retain possession of it until the creditor performs its obligations to return any money and cancel any security interest. Upon performance of these duties by the creditor, the customer is required to tender the property to the creditor at the location of the property or the residence of the customer, at the option of the customer. If the creditor does not take possession of the property within ten days after tender by the customer, the customer becomes the owner of the property without the obligation to pay for it.

A customer may waive his right to rescind the transaction otherwise subject to these provisions if:

1. The extension of credit is needed in order to meet a "bona fide immediate personal financial emergency";
2. The customer has determined that a delay of three business days 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 (the use of printed forms is prohibited) describing the situation requiring immediate remedy and modifying or waiving his right of rescission.

226.10, pg.22

Another substantive rule contained in the original Truth in Lending Act relates to advertising. Under that rule, a creditor is prohibited from advertising that a specific amount of credit or installment amount can be arranged unless the creditor usually and customarily arranges or will arrange credit amounts or installments for that period and in that amount. Similarly, a creditor is prohibited from advertising 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.

No advertisement of *open end credit* may set forth any of the "opening disclosures" or that a specified downpayment or periodic payment is required (either in dollars or as a percentage) or the period of repayment or any of the following items, unless it also sets forth all of the following items, using required terminology:

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 on which the finance charge may be imposed;
3. The method of determining the amount of the finance charge, including any minimum, fixed, check service, transaction, activity, or similar charge; and
4. Where one or more periodic rates may be used to compute the finance charge, each corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year and, where there is more than one corresponding annual percentage rate, the range of balances to which each is applicable.

226.10(d)

In connection with advertising of *credit other than open end,* no such advertisement may set out the rate of the finance charge except as an "annual percentage rate," using that term, except that:

1. Where the total finance charge includes an interest component computed at a simple annual rate, the simple annual rate may also be disclosed, but not more conspicuously than the annual percentage rate; and
2. Where the finance charge is computed solely by the application of a periodic rate to an unpaid balance, that periodic rate may also be set out, but not more conspicuously than the annual percentage rate.

No advertisement of credit other than open end may state that no downpayment is required, or the amount of the downpayment, or the amount of any installment payment, or the amount of any finance charge, or the number of installments or the period of repayment, or that there is no charge for credit, unless it also sets forth all of the following items, using required terminology:

1. The cash price or amount of the loan, as applicable;
2. In a credit sale, the amount of the downpayment or that no downpayment is required, as applicable;
3. The number, amount, and due dates or periods of payments scheduled to repay the indebtedness;
4. The annual percentage rate;
5. Except in the case of a first lien to finance the purchase of a dwelling, the deferred payment price in a credit sale or the total of payments in a loan.

There are special requirements for catalogs or other multiple page advertisements.

226.12(c)
pg.25

Civil penalties for violations of the Truth in Lending Act and Regulation Z are quite severe. For any violation of a *credit* provision, a creditor is liable for an amount equal to the sum of—

1. Actual damages;
2. In an individual action, twice the amount of the finance charge in connection with the transaction, but not less than $100 or more than $1,000; or
3. In the case of a class action, such amount as the court may allow, except that no minimum recovery applies to each member of the class, and the total recovery may not be more than the lesser of $500,000 or one percent of the net worth of the creditor; and
4. In the case of any successful action to enforce civil liability, the court costs and attorneys' fees.

For violations of the leasing provisions of the regulation, the civil liabilities remain the same except that in individual actions the amount is not twice the amount of the finance charge; instead, it is 25 percent of the total amount of the monthly payments under the lease, but not less than $100 nor more than $1,000.

In determining the amount of any award in a class action, the court is required to consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failure of compliance by the creditor, the resources of the creditor, the number of persons adversely affected by the violation, and the extent to which the creditor's failure of compliance was intentional.

A creditor is not subject to the civil penalties if—

1. Within 15 days after discovering an error, and prior to the filing of suit for civil penalties or the receipt of written notice of the error, the creditor notifies the person concerned of the error; and
2. The creditor makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay a charge in excess of the amount or percentage rate actually disclosed.

Similarly, a creditor is not liable for civil penalties if the creditor can show 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. However, the courts have held that this exception relates purely to clerical and mechanical errors, not errors of law or interpretation of the regulation.

The statute of limitation under the credit provisions of the regulation runs for one year "from the date of the occurrence of the violation."

However, under the leasing provisions, the statute runs for one year from the "termination of the lease agreement." Thus, in a three-year lease transaction, presumably, the statute runs for four years from the date of consummation, where in a similar credit transaction, it would run for one year from the date of consummation.

A creditor is not subject to civil penalties for any act done or omitted in good faith in conformity with any rule, regulation, or interpreation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals, notwithstanding that after such act or omission has occurred, that rule, regulation, interpretation, or approval is amended, rescinded, or determined by a court or other authority to be invalid for any reason.

The multiple failure to disclose any information required under Regulation Z in connection with a single account under an open end plan or other single transaction entitles the affected consumer to but a single recovery. However, continued failure by a creditor to disclose after recovery has been granted gives rise to additional recoveries.

As the civil penalties are now drafted, courts have ruled time and time again that they have no latitude to relieve a creditor of civil penalty for highly technical violations, even where the consumer neither alleges nor proves actual damages. Thus, the Truth in Lending Act and Regulation Z are being used as the basis for many law suits and threatened law suits which involve no actual damages of any kind. Legislation was introduced in the 94th Congress (and is expected to be reintroduced in the 95th Congress) which, if passed, will limit civil penalties to violations involving disclosures of the annual percentage rate, the finance charge, the amount financed, or the due dates or periods of payments scheduled to repay the indebtedness. Under the proposed amendment, all other violations would be subject to administrative enforcement by the various federal agencies, but not to civil penalties. However, until any such amendment is passed, the civil penalty provisions remain as outlined above.

TITLE 12 — BANKS AND BANKING

CHAPTER II — FEDERAL RESERVE SYSTEM

SUBCHAPTER A — BOARD OF GOVERNORS
(Reg. B; Docket No. R-0031)
PART 202 — EQUAL CREDIT OPPORTUNITY

Amendments to Regulation B to Implement the 1976 Amendments to the Equal Credit Opportunity Act

Model Credit Application Forms

Pursuant to the 1976 amendments to the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Board published for public comment on July 20 (41 FR 29870) and November 8, 1976 (41 FR 49123) proposed revisions of its Regulation B, which implements the Act. Since many creditors, particularly smaller ones, experienced difficulties in preparing credit application forms to comply with existing Regulation B, the Board included in its July and November proposals sample application forms. In addition, on November 24, the Board published (41 FR 51837) a proposed model residential real estate mortgage loan application.

After consideration of the numerous comments that were submitted regarding the proposed model forms, the Board has adopted revised versions of the forms, which constitute Appendix B of Regulation B as published on January 6, 1977 (42 FR 1242). Appendix B contains five model forms: one designed for use in open end, unsecured consumer credit transactions; one for closed end, secured transactions; another one for closed end transactions, whether unsecured or secured; one for use in community property situations; and one for use in residential real estate mortgage transactions.

The Appendix B forms are only models. Their use is optional. A creditor may design its own forms; use forms prepared by another person or entity; or use or modify the model forms. Proper use of the model forms assures compliance with Regulation B's requirements. Before using a model form, however, a creditor should check that use of the form complies with applicable State law. The subject of application forms is covered in §202.5(e) of the revised regulation.

The forms will be printed as sample applications in a pamphlet containing the texts of Regulation B and the amended Equal Credit Opportunity Act. If a creditor chooses to use a model form, it should make its own reproduction arrangements using the forms as they appear in the Board's pamphlet or as printed in the *Federal Register*. Neither the Board nor the Federal Reserve Banks will print or distribute multiple copies for actual use by a creditor. Copies of the model residential real estate mortgage loan application, as modified to meet the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association (form FHLMC 65/FNMA 1003 [Rev. 3/77]), will be available for reproduction purposes from either FHLMC or FNMA.

A discussion of the changes that have been made in the forms from the November proposals follows. The revised version of Regulation B, including Appendix B, becomes effective on March 23, 1977.

Cover Sheet of Appendix B

The directions printed on the cover sheet of Appendix B have been completely rewritten and expanded. As revised, the directions specify the appropriate use for each form, confirm the optional nature of the forms, and list the three informational items that a creditor is expressly authorized to add to any of the model forms. The directions also note that the model residential real estate mortgage loan application was developed in conjunction with the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, and is substantially the same as the joint FHLMC 65/FNMA 1003 (Rev. 3/77) form. The directions state, however, that the model form must be modified as required by FHLMC and FNMA or the joint FHLMC/FNMA form must be used if a creditor intends to participate in the governmentally sponsored secondary mortgage market. The FHLMC 65/FNMA 1003 (Rev. 3/77) form, of course, complies with the requirements of the revised version of Regulation B.

Non-Real Estate Forms

While the general format of the four non-real estate model forms remains unchanged from the November proposal, several significant clarifying changes have been made.

The directions to the applicant at the head of the forms have been rewritten in an attempt to clarify those instructions. Since creditors may include, particularly in open end credit situations, an obligation agreement on the forms and since the issue of who must sign an application is a matter of policy for each creditor to

decide in conformity with the requirements of §202.7(d) of the revised regulation, the directions regarding signatures have been deleted.

While several commentators recommended that the terms "applicant" and "co-applicant" be substituted for the word "you" in the directions, the Board has decided to retain the "you." Although the use of "you" may be ambiguous when a joint applicant is involved, the substitution of "applicant" and "co-applicant" would make the directions lengthier and would, in the Board's opinion, negate any clarity obtained by the substitution.

At the request of several creditors, "birthdate" has been substituted for "age" in the inquiries about age in Sections A and B of the forms. This was done to provide birthdate information as an identifier for credit investigations and credit reporting purposes and to provide the necessary birthdate information when credit insurance is involved.

In order to obtain a more accurate picture of an applicant's disposable income, the word "net" has been inserted before "salary or commission" in both Sections A and B to clarify that the question requests after-tax take-home pay.

The notice regarding the option not to reveal alimony, child support, or separate maintenance income has been further highlighted by placing it within a rectangular box. Also included within the box is the question about the basis on which such income is paid. This was done to underscore the point that no information concerning the receipt of alimony, child support, or separate maintenance need be provided if an applicant chooses not to do so.

Since the revised regulation (§§202.6(b)(2)(iii) and 202.6(b)(5)) permits creditors to consider the probable continuity of an applicant's income, a question about the likelihood of a reduction in income has been added to the forms.

Since a creditor is permitted to inquire about the marital status of any party about whom information is furnished when the application is not for an unsecured, individual account, Section C has been expanded to include a request about the marital status of any such other party.

In Section D, under Assets Owned, the third column has been retitled "Subject to Debt?—Yes/No" to replace the confusing title "Encumbered?" In that same section, more space has been provided for listing automobiles, real estate, and marketable securities.

Credit references have been segregated from outstanding debts, a note has been inserted that rent payments should not be included in the Original Debt and Present Balance columns, and the Past Due column has been converted into a yes/no question.

The statement above the signature lines has been completely rewritten to simplify and clarify it. Since the criminal penalty statement would not necessarily apply in every situation and since it appeared inappropriate on a model form, it has been deleted.

Finally, since they were inappropriate in certain contexts, the words "borrow," "loan," and "lender" and similar terms have been eliminated from the forms.

Real Estate Form

The model residential real estate mortgage loan application published by the Board in November followed the form designed and currently used by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. In cooperation with those agencies, the Board has revised the proposed form in response to the numerous and extensive comments that were submitted.

For clarification, certain abbreviations have been modified or spelled out.

The item requesting whether the property is a fee, leasehold, condominium, or planned unit development has been deleted. The request would be confusing to an applicant, and the information is better obtained at the appraisal stage.

The blocks relating to the names and manner in which title will be held have been revised to make the questions more understandable to an applicant.

The item asking who the note will be signed by has been deleted. That determination is one to be made by the creditor in compliance with section 202.7(d) of the revised regulation.

The instructions regarding the completion of the co-borrower section have been rewritten to make them clearer. A sentence has also been added to indicate that the form is designed to be completed by an applicant with the lender's assistance.

Lines for the borrower's and co-borrower's Social Security numbers have been added. This information will assist creditors in verifying and furnishing credit history information. Also, spaces have been inserted on the front of the form for home and office telephone numbers.

A footnote has been added, specifying that present monthly housing expenses should be listed by the borrower and co-borrower on a combined basis. For purposes of a comparison between present and proposed monthly housing expenses, a combined listing makes more sense than the separate listing required in the November proposal.

Under Details of Purchase, the abbreviation "(Est.)" has been inserted on lines b, c, and j to make clear that the listed closing costs are estimates. This section is intended to assist a lender at the application stage in calculating whether an applicant has the funds to meet anticipated closing costs. It is not a substitute for the good-faith estimate of settlement costs required by the Real Estate Settlement Procedures Act.

The section at the bottom of the front of the form has been revised. The request for an explanation of a "yes" answer has been rewritten to make clear that it applies only to the questions in the left-hand column and not to the ones in the right-hand column. The first series of questions in the left column have been rephrased and separated into distinct questions. Finally, the words "sales price" have been substituted for the less definite term "value" in the last question in the column on the right.

On the reverse side, more space has been provided in the schedule of assets and liabilities, and, in the liabilities section, a column has been inserted for the name in which a debt is carried by a creditor if different from the borrower's or co-borrower's name.

The credit references section has been expanded to include a request for any other names in which the borrower or co-borrower has received credit.

The agreement has been modified to include a notice that the application will be retained by the lender. The criminal penalties provision has been deleted since it would not apply to lenders whose assets are not insured by a Federal agency or who do not make Federally insured or guaranteed loans.

The section relating to information for monitoring purposes has been changed in several respects. The title of the section and the text have been revised to underscore that the information is being sought by the Federal government, not the lender, and that furnishing the information is completely voluntary. The text has also been changed to clarify that the request for information applies only if an applicant is seeking a mortgage loan for the purchase of residential real property or the construction of a home.

In addition, the questions regarding marital status and age have been deleted from the monitoring section because their inclusion was confusing. Although marital status and age information is sought for monitoring purposes, questions relating to those items appear on the face of the form, where disclosure of the information is not optional. Furthermore, a creditor may consider that information as authorized in Regulation B.

For the reasons stated in this notice and pursuant to section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the following materials are adopted as Appendix B of Regulation B (12 CFR 202), effective March 23, 1977.

By order of the Board of Governors, January 14, 1977.

Theodore E. Allison

Secretary of the Board

APPENDIX B

MODEL APPLICATION FORMS

This Appendix contains five model credit application forms, each designed for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form (which should be removed prior to reproduction). The first sample form is intended for use in open end, unsecure transactions; the second for closed end, secured transactions; the third for closed end transactions, whether unsecured or secured; the fourth for use in transactions involving community property or occurring in community property States; and the fifth for use in secured residential real estate transactions. The real estate form should be used only when a lender's representative is available to assist an applicant in completing the form.

The forms contained in this Appendix are models; their use by creditors is optional. In all instances, the use or modification of these forms is governed by section 202.5(e) of this Part and the directions contained in this Appendix.

In addition to deleting any information request printed on the forms or rearranging their format, as specified in section 202.5(e), a creditor is expressly permitted to modify any of the model forms contained in this Appendix by adding any of the following three items:

1. An inquiry about the names in which an applicant has previously received credit as authorized in section 202.5(c)(3);
2. A request to designate a courtesy title as authorized in seciton 202.5(d)(3); or
3. An inquiry about an applicant's permanent residence and United States immigration status as authorized by section 202.5(d)(5).

The fifth form contained in this Appendix, the model residential real estate mortgage loan application, was prepared in conjunction with the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. It is substantially identical to the joint FHLMC 65/FNMA 1003 (Rev. 3/77) form, except for type face and the inclusion on the FHLMC/FNMA form of certain items required by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. If a creditor wishes to participate in the secondary mortgage market involving the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or Government National Mortgage Association, it should either modify the model form as specified by the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association or use form FHLMC 65/FNMA 1003 (Rev. 3/77) with supporting schedule FHLMC 65A/FNMA 1003A. Use of the FHLMC 65/FNMA 1003 (Rev. 3/77) form constitutes full compliance with subsections (c) and (d) of section 202.5 of this Part.

[Open end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.

☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.

☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ..... Birthdate: / /

Present Street Address: ..... Years there: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Previous Street Address: ..... Years there: .....

City: ..... State: ..... Zip: .....

Present Employer: .....Years there: ..... Telephone: .....

Position or title: .....Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... Years there: .....

Previous Employer's Address: .....

Present net salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... per ..... Source(s) of other income: .....

.....

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? ..... When? ..... Office: .....

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

Name of nearest relative not living with you: ..... Telephone: .....

Relationship: ..... Address: .....

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ..... Birthdate: / /

Relationship to Applicant (if any): .....

Present Street Address: ..... Years there: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Present Employer: .....Years there: ..... Telephone: .....

Position or title: .....Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... Years there: .....

Previous Employer's Address: .....

Present net salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... per ..... Source(s) of other income: .....

.....

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

Name of nearest relative not living with Joint Applicant, User, or Other Party: ..... Telephone: .....

Relationship: ..... Address: .....

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
4.						
5.						
6.						
Total Debts			$	$	$	

(Credit References)		Date Paid
1	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature _____ Date _____ Other Signature (Where Applicable) _____ Date _____

[Closed end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.
- ☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

Amount Requested | Payment Date Desired | Proceeds of Credit

$..... ..... To be Used For.....

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ..... Birthdate: / /

Present Street Address: ..... Years there: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Previous Street Address: ..... Years there: .....

City: ..... State: ..... Zip: .....

Present Employer ..... Years there: ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... Years there: .....

Previous Employer's Address: .....

Present net salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... per ..... Source(s) of other income: .....

.....

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? ..... When? ..... Office: .....

Checking Account No. ..... Institution and Branch: .....

Savings Account No. ..... Institution and Branch: .....

Name of nearest relative not living with you: ..... Telephone: .....

Relationship: ..... Address: .....

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ..... Birthdate: / /

Relationship to Applicant (if any): .....

Present Street Address: ..... Years there: .....

City: ..... State: ..... Zip ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Present Employer: ..... Years there: ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... Years there: .....

Previous Employer's Address: .....

Present net salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... per ..... Source(s) of other income: .....

.....

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

Name of nearest relative not living with Joint Applicant or Other Party: .....

Relationship: ..... Address: .....

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
			$	$	$	
Total Debts						

(Credit References)		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract?	Yes ☐	No ☐	If "yes" for whom?	To whom?
Are there any unsatisfied judgments against you?	Yes ☐ No ☐	Amount $	If "yes" to whom owed?	
Have you been declared bankrupt in the last 14 years?	Yes ☐ No ☐	If "yes" where?		Year

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT Briefly describe the property to be given as security:

.....

.....

and list names and addresses of all co-owners of the property:

Name	Address

If the security is real estate, give the full name of your spouse (if any): .....

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

[Closed end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.

☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested | Payment Date Desired | Proceeds of Credit

$..... | ..... | To be Used For .....

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ..... Birthdate: / /

Present Street Address: ..... Years there: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Previous Street Address: ..... Years there: .....

City: ..... State: ..... Zip: .....

Present Employer: ..... Years there: ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... Years there: .....

Previous Employer's Address: .....

Present net salary or commission: $ ..... per ..... No. Dependents: ..... Ages: .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... per ..... Source(s) of other income: .....

.....

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.) ☐ No

Have you ever received credit from us? ..... When? ..... Office .....

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

Name of nearest relative not living with you: ..... Telephone: .....

Relationship: ..... Address: .....

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ..... Birthdate: / /

Relationship to Applicant (if any): .....

Present Street Address: ..... Years there: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Present Employer: ..... Years there: ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... Years there: .....

Previous Employer's Address: .....

Present net salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... per ..... Source(s) of other income: .....

.....

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.) ☐ No

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

Name of nearest relative not living with Joint Applicant or Other Party: ..... Telephone: .....

Relationship: ..... Address: .....

SECTION C—MARITAL STATUS

(Do not complete if this is an application for individual unsecured credit.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References)						Date Paid
1.			$			
2.						

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "Yes," for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "Yes," to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "Yes," where? Year

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

.....

.....

and list names and addresses of all co-owners of the property:

Name **Address**

.....

.....

If the security is real estate, give the full name of your spouse (if any): .....

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

Amount Requested $..... Payment Date Desired ..... Proceeds of Credit To be Used For .....

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ..... **Birthdate:** / /

Present Street Address ..... **Years there:** .....

City: ..... **State:** ..... **Zip:** ..... **Telephone:** .....

Social Security No.: ..... **Driver's License No.:** .....

Previous Street Address: ..... **Years there:** .....

City: ..... **State:** ..... **Zip:** .....

Present Employer: ..... **Years there:** ..... **Telephone:** .....

Position or title: ..... **Name of supervisor:** .....

Employer's Address: .....

Previous Employer: ..... **Years there:** .....

Previous Employer's Address: .....

Present net salary or commission: $ ..... **per** ..... **No. Dependents:** ..... **Ages:** .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... **per** ..... **Source(s) of other income:** .....

.....

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? ..... **When?** ..... **Office:** .....

Checking Account No.: ..... **Institution and Branch:** .....

Savings Account No.: ..... **Institution and Branch:** .....

Name of nearest relative not living with you ..... **Telephone:** .....

Relationship: ..... **Address:** .....

***SECTION B*—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)**

Full Name (Last, First, Middle): ..... **Birthdate:** / /

Relationship to Applicant (if any): ..... **Years there:** .....

Present Street Address: .....

City: ..... **State:** ..... **Zip:** ..... **Telephone:** .....

Social Security No.: ..... **Driver's License No.:** .....

Present Employer: ..... **Years there:** ..... **Telephone:** .....

Position or title: ..... **Name of supervisor:** .....

Employer's Address: .....

Previous Employer: ..... **Years there:** .....

Previous Employer's Address: .....

Present net salary or commission: $..... **per** ..... **No. Dependents:** ..... **Ages:** .....

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $..... **per** ..... **Source(s) of other income:** .....

.....

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: ..... **Institution and Branch:** .....

Savings Account No.: ..... **Institution and Branch:** .....

Name of nearest relative not living with Spouse, Joint Applicant, User, or other Party: ..... Telephone: .....

Relationship: ..... **Address:** .....

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED **(Use separate sheet if necessary.)**

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Name of Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References)		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes," for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes," to whom owed?

Have you been declared bankrupt in the last 14 years Yes ☐ No ☐ If "yes," where? Year

Other obligations—(E.g., Liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

.....

.....

and list names and addresses of all co-owners of the property:

Name **Address**

.....

.....

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

[Residential real estate mortgage loan]

RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR ☞	☐ Conventional ☐ FHA ☐ VA ☐ _____	Amount $_____	Interest Rate ____%	No. of Months	Monthly Payment Principal & Interest $_____	Escrow/Impounds (to be collected monthly) ☐ Taxes ☐ Hazard Ins. ☐ Mtg. Ins. ☐ _____

Prepayment Option

1. SUBJECT PROPERTY

Property Street Address	City	County	State	Zip	No. Units

Legal Description (Attach description if necessary.) — Year Built

Purpose of Loan: ☐ Purchase ☐ Construction-Permanent ☐ Construction ☐ Refinance ☐ Other (Explain)

Complete this line if Construction-Permanent or Construction Loan ☞	Lot Value Data	Original Cost	Present Value (a)	Cost of Improv. (b)	Total (a + b)	ENTER TOTAL AS PURCHASE PRICE IN DETAILS OF ☜ PURCHASE.
	Year Acquired ____	$_____	$_____	$_____	$_____	

Complete this line if a Refinance Loan			Purpose of Refinance	Describe Improvements [ ] made [ ] to be made
Year Acquired	Original Cost	Amt. Existing Leins		
	$	$		Cost: $_____

Title Will Be Held In What Name(s) — Manner in Which Title Will Be Held

Source of Down Payment and Settlement Charges

This application is designed to be completed by the borrower(s) with the lender's assistance. The Co-Borrower Section and all other Co-Borrower questions must be completed and the appropriate box(es) checked if ☐ another person will be jointly obligated with the Borrower on the loan, ☐ the Borrower is relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as a basis for repayment of the loan, or ☐ the Borrower is married and resides, or the property is located, in a community property state.

2. BORROWER

Name — Age — School Yrs.

Present Address — No. Years ____ ☐ Own ☐ Rent

Street _____

City/State/Zip _____

Former address if less than 2 years at present address

Street _____

City/State/Zip _____

Years at former address ☐ Own ☐ Rent

Marital Status: ☐ Married ☐ Separated ☐ Unmarried (incl. single, divorced, widowed)

Dependents other than listed by Co-borrower: No. — Ages

Name and Address of Employer

Years employed in this line of work or profession? ____ years

Years on this job ____

☐ Self Employed

Position/Title — Type of Business

Social Security Number — Home Phone — Business Phone

3. CO-BORROWER

Name — Age — School Yrs.

Present Address — No. Years ____ ☐ Own ☐ Rent

Street _____

City/State/Zip _____

Former address if less than 2 years at present address

Street _____

City/State/Zip _____

Years at former address ☐ Own ☐ Rent

Marital Status: ☐ Married ☐ Separated ☐ Unmarried (incl. single, divorced, widowed)

Dependents other than listed by Borrower: No. — Ages

Name and Address of Employer

Years employed in this line of work or profession? ____ years

Years on this job ____

☐ Self Employed

Position/Title — Type of Business

Social Security Number — Home Phone — Business Phone

4. GROSS MONTHLY INCOME

Item	Borrower	Co-Borrower	Total
Base Empl. Income	$	$	$
Overtime			
Bonuses			
Commissions			
Dividends/Interest			
Net Rental Income			
Other† Before completing, see notice under Describe Other Income below.)			
Total	$	$	$

5. MONTHLY HOUSING EXPENSE

Rent	Present* $	Proposed $
First Mortgage (P&I)		
Other Financing (P&I)		
Hazard Insurance		
Real Estate Taxes		
Mortgage Insurance		
Homeowner Assn. Dues		
Other:		
Total Monthly Pmt.	$	$
Utilities		
Total	$	$

6. DETAILS OF PURCHASE

a. Purchase Price	$
b. Total Closing Costs (Est.)	
c. Pre Paid Escrows (Est.)	
d. Total (a+b+c)	$
e. Amount of Mortgage	( )
f. Other Financing	( )
g. Present Equity in Lot	( )
h. Amount of Cash Deposit	( )
i. Closing Costs Paid by Seller	( )
j. Cash Reqd. For Closing (Est.)	$

7. DESCRIBE OTHER INCOME

⇩ B–Borrower C–Co-Borrower

NOTICE: † Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered as a basis for repaying this loan.

	Monthly Amount
	$

8. IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING

B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Income
						$

9. THESE QUESTIONS APPLY TO BOTH BORROWERS

If a "yes" answer is given to a question in this column, explain on an attached sheet.

	Borrower Yes/No	Co-Borrower Yes/No
Have you any outstanding judgments?		
In the last 14 years, have you been bankrupt?		
Have you had property foreclosed upon or given title or a deed in lieu thereof?		
Are you a co-maker or endorser on a note?		
Are you a party in a law suit?		
Are you obligated to pay alimony, child support, or separate maintenance?		
Is any part of the down payment borrowed?		

	Borrower Yes/No	Co-Borrower Yes/No
Do you have health and accident insurance?		
Do you have major medical coverage?		
Do you intend to occupy the property?		
Will this property be your primary residence?		
Have you previously owned a home?		
Sales Price of previously owned home	$	$

* All Present Monthly Housing Expenses of the Borrower and Co-Borrower should be listed on a combined basis.

This statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the statement can be meaningfully and fairly presented on a combined basis; otherwise separate statements and schedules are required. If the Co-Borrower section was completed about a spouse, this statement and supporting schedules must be completed about that spouse also.

☐ Completed Jointly ☐ Not Completed Jointly

STATEMENT OF ASSETS AND LIABILITIES

10. ASSETS

Description	Cash or Market Value
Cash Deposit Toward Purchase Held By	$
Checking and Savings Accounts (Names of Institutions/ Acct. Nos.)	
Stocks and Bonds (No./description)	
Life Insurance Net Cash Value	
Face Amount ($)	
SUBTOTAL LIQUID ASSETS	$
Real Estate Owned *(Enter Market Value from Schedule of Real Estate Owned)*	
Vested Interest in Retirement Fund	
Net Worth of Business Owned *(Attach Financial Stat.)*	
Automobiles (Make and Year)	
Furniture and Personal Property	
Other Assets (Itemize)	
TOTAL ASSETS	A $

11. LIABILITIES

Creditor (Name, Address, Account Number)	Name Acct. In Other Than Borrowers	Mo. Pmt. and Mos. left to pay	Unpaid Balance
Instalment Debts (include "revolving" charge accounts)		$ Pmt./Mos. /	$
		/	
		/	
		/	
Automobile Loans		/	
		/	
Real Estate Loans		XXXX	
Other Debt, Incldluing Stock Pledges			
		/	
Alimony, Child Support, and Maintenance Payments (To Whom Paid)		/	XXXX
TOTAL MONTHLY PAYMENTS		$	XXXX
NET WORTH (A minus B) $		TOTAL LIABILITIES	B $

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned Attach Separate Schedule)

Address of Property (Indicate S if Sold, PS if Pending Sale or R if Rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Leins	Gross Rental Income	Mortgage Payments	Taxes, Ins. Maintenance and Misc.	Net Rental Income
		$	$	$	$	$	$
TOTALS		$	$	$	$	$	$

12. LIST PREVIOUS CREDIT REFERENCES

B–Borrower C–Co-Borrower Creditor's Name and Address	Account Number	Purpose	Highest Balance	Date Paid

List any additional names under which credit has previously been received _____

AGREEMENT: The Undersigned applies for the loan indicated in this application, to be secured by a first mortgage or deed of trust on the property described herein, and represents that the property will not be used for any illegal or restricted purpose and that all statements made in this application are true and are made for the purpose of obtaining the loan. Verification may be obtained from any source named in this application. The original or a copy of this application will be retained by the lender, even if the loan is not granted.

Borrower's Signature _____ Date / / Co-Borrower's Signature _____ Date / /

VOLUNTARY INFORMATION FOR GOVERNMENT MONITORING PURPOSES

If this loan is for purchase or construction of a home, the following information is requested by the Federal Government to monitor this lender's compliance with Equal Credit Opportunity and Fair Housing Laws. The law provides that a lender may neither discriminate on the basis of this information nor on whether or not it is furnished. Furnishing this information is optional. If you do not wish to furnish the following information, please initial below.

BORROWER: I do not wish to furnish this information (initials)

Race/National Origin

☐ American Indian, Alaskan Native SEX ☐ Female ☐ Male
☐ Asian, Pacific Islander ☐ Black ☐ Hispanic ☐ White
☐ Other (specify)

CO-BORROWER: I do not wish to furnish this information (initials)

Race/National Origin

☐ American Indian, Alaskan Native SEX ☐ Female ☐ Male
☐ Asian, Pacific Islander ☐ Black ☐ Hispanic ☐ White
☐ Other (specify)

FOR LENDER'S USE ONLY

Reverse

D

MEMORANDUM

July 25, 1977

TO: Special Committee on Commercial and Financial Institutions

FROM: Kansas Legislative Research Department

RE: Equal Credit Opportunity Complaints

The following is a summary listing of Equal Credit Opportunity Act complaints filled with the several enforcement agencies designated in the federal Act. Your use of these figures should be tempered by the knowledge that there is no uniform reporting period in which the data has been collected nor a final disposition for the claims made.

Attorney General — acts upon his own motion or upon referrals from other enforcement agencies to seek such relief as may be appropriate

Complaints: less than 50 (March, 1976 - December, 1976) No referrals from other agencies

Attorney General, Kansas

Complaints: None for referral

U.S. Attorney, Kansas

Complaints: one inquiry in the last nine months (no previous contacts)

Comptroller of the Currency — acts as enforcement agency for all national banks

Complaints: two for Kansas in 1976

Federal Home Loan Bank — acts as enforcement agency for all savings institutions insured by the FSLIC and members of the FHLB

Complaints: one for Kansas in 1976

Att'h. D

Federal Reserve Bank	acts as enforcement agency for all state member banks
Complaints, Total:	665 in 1976
Complaints, Kansas:	None
Federal Trade Commission	acts as enforcement agency for all retail, department stores, consumer finance companies, all other creditors, and all non-bank credit card issuers
Complaints, Total:	2,060 (January 1, 1976 - December 1, 1976)
Complaints, Kansas	five (January 6, 1977 to date)
Federal Deposit Insurance Corporation	acts as enforcement agency for all non-federal reserve member insured banks
Complaints, Total:	50-100 in 1976 (one or two violations)
Complaints, Kansas:	None
Kansas Commission on Civil Rights	has broad authority to act in areas of public housing and public accommodations
Complaints:	(See attached memorandum.)
National Credit Union Administration	acts as enforcement agency for all federal credit unions
Complaints:	NCUA has not kept records

E

MEMORANDUM

TO: Bill Wolff, Legislative Research Department
545-N, Statehouse

FROM: Thomas W. Moore, Education Specialist T.W.M.
Kansas Commission on Civil Rights

SUBJECT: Requested information on complaints of discrimination in the granting of credit

DATE: July 20, 1977

On the attached sheets are listed all the cases we could find of denials of credit. In the case numbers "H" indicates an alleged violation of the housing section of the law, "PA" indicates an alleged violation of the public accommodations provisions, the first number is the serial number of the case, the second number is the fiscal year in which the complaint was filed and "W" indicates it was filed with our Wichita office.

In the disposition of cases column, NPC means No Probable Cause, the evidence does not indicate unlawful discrimination; PC-SA means Probable Cause - Satisfactory Adjustment; Ad. Closed means Administratively Closed.

There are 33 complaints listed of which two are duplicates.

TWM/mks
Enclosures

Atch. E

CASE #	BASIS FOR COMPLAINT	RESPONDENT & CITY	REMARKS	DISPOSITION OF CASE
H-2-71W	Race (Black)	Valley Federal Savings & Loan Assn. - Hutchinson	Denial of Loan	NPC
H-16-73W	Race (Black)	Farmers Home Administration - Hutchinson	Denial of Loan	Ad. - Lack of Jurisdiction
H-39-74W	Race (Black)	Mid-Kansas Federal Savings & Loan Assn. - Wichita	Denial of Loan	PC - SA
H-44-75W	Race (Black)	Mortgage Guaranty Insurance Corporation - El Dorado	Denial of Loan Insurance	NPC
H-57-75W	Sex (Female)	Wichita Federal Savings & Loan - Wichita	Denial of Loan of $5,500	Withdrawn
H-66-76W	Sex (Female)	Kansas Federal Credit Union - Wichita	Denial of Home Imp. Loan of $300	NPC
H-80-77W	Religion (The House of Refuge)	Salt City Federal Savings & Loan - Hutchinson	Denial of Loan to Church	NPC
H-81-77W	Religion (The House of Refuge)	Valley Federal Savings & Loan - Hutchinson	Denial of Loan to Church	NPC
H-87-77W	Ancestry (Mex-Amer.)	Golden Plains Credit Union - Garden City	Denial of Loan to Purchase 4 Building Lots	NPC
H-3-71	Race (Black)	Topeka Savings Assn. - Topeka	Denial of Home Imp. Loan	Ad. Closed. Replaced by H-7
H-4-71	Race (Black)	Credit Bureau of Topeka	Failure to Furnish Most Recent Report	Ad. Closed. Replaced by H-8
H-7-71	Race (Black)	Topeka Savings Assn.	Denial of Home Imp. Loan. Duplicate of H-3-71	NPC
H-8-71	Race (Black)	Credit Bureau of Topeka	Duplicate of H-4-71	NPC
H-73-73	Race (Black)	Fidelity Investment Co. - Topeka	Denial of FHA 235 Home Purchase Loan	Open

CASE #	BASIS FOR COMPLAINT	RESPONDENT & CITY	REMARKS	DISPOSITION OF CASE
H-88-73	Sex (Female)	Topeka Postal Credit Union	Denial of Home Imp. Loan because of Husband's Bad Credit When A Bachelor.	NPC
H-96-73	Sex (Female)	Mortgage Guarantee Insurance Corporation - Topeka	Would count only 1/2 of Wife's Salary As Income In Computing Ability To Pay. Denial Insurance on Loan To Buy A Farm.	PC - SA
H-143-75	Sex (Female)	IDS Mortgage Corporation - Mission	Wife was Principle Wage Earner. IDS Asked for Inf. on Birth Control. Denied Loan on Grounds of Unacceptable Property.	NPC
H-150-75	Sex (Female)	Federal Natl. Mortgage Assn.	Same Application as H-143-75. FNMA would not approve IDS making the Loan.	NPC
PA-83-68	Race (Black)	J. M. McDonald Co. (Dept. Store)	Denied Charge Account on Basis of Outdated Credit Bureau Ref. & Denied After it was Updated.	Closed 4/12/69
PA-141-73	Sex (Female)	J. C. Penney Co. - Topeka	Wife Denied Credit Card in Her Own Name. Has Ph.D. & Employed at K.N.I.	PC - SA
PA-145-73	Race (Black)	Sears, Roebuck & Co. - Topeka	Bill Minner Denied Credit for Purchase of Furniture.	PC - SA
PA-166-74	Sex (Female)	J. C. Penney Co. - Manhattan	Denied Credit Card Withdrawn in Her Name. Given One in Husband's Name.	

CASE #	BASIS FOR COMPLAINT	RESPONDENT & CITY	REMARKS	DISPOSITION OF CASE
PA-213-75	Sex (Female)	So Co Tire Co. - Topeka	Wife's Signature Not Accepted for Financial Credit Papers for Purchase of Tires.	NPC
PA-228-75	Race (Black)	Western Electric Employees Credit Union - Merriam	Unequal Conditions Imposed on Blacks as Compared to Whites in Order to Get a Signature Loan of $125 for 3 weeks.	Ad. Closed Failure to Respond.
PA-242-75	Race (Black)	Laird Noller Ford, Inc. - Topeka	Did Not Check Credit Through Comp.'s Credit Union But Directly with Credit Bureau & Denied Credit for Purchase of Car.	NPC
PA-258-76	Sex (Female)	Ks. Fed. Credit Union - Shawnee	Required Husband's Sig. for Loan Because Car was Collateral.	NPC
PA-260-76	Sex (Female)	Topeka Firemen's Credit Union	Denial of Loan, Unequal Application of Rules on Family Members.	PC - SA
PA-263-76	Sex (Female)	Ks. Credit Union, 1010 Tyler- Topeka	Denial of Loan.	NPC
PA-272-77	Race (Black)	Rubber Workers Local 307 Federal Credit Union - Topeka	Denial of $7,000 for Purchase of Lincoln Mark IV.	Open
PA-91-75W	Race (Black)	K-Mart Discount Store - Wichita	Extra Requirements Placed on Use of Master Charge Card as Compared to White Customer	NPC
PA-107-76W	Race (Black)	B-I-C Loans - Wichita	Denial of Loan	SA - Prior to Determination.

CASE #	BASIS FOR COMPLAINT	RESPONDENT & CITY	REMARKS	DISPOSITION OF CASE
PA-109-77W	Sex (Female)	AVCO Financial Services, Inc. - Hutchinson	Denial of $500 Loan	NPC
PA-110-77W	Race (Black)	B-I-C Loans - Wichita	Denial of Loan	Open

"F"

STATEMENT OF STANLEY L. LIND,
COUNSEL FOR THE KANSAS ASSN. OF FINANCE COS., INC.,
BEFORE THE KANSAS LEGISLATIVE INTERIM COMMERCIAL &
FINANCIAL INSTITUTIONS COMMITTEE ON JULY 27, 1977,
IN REGARD TO THE PROPOSAL TO ENACT AS A STATE LAW,
THE FEDERAL EQUAL CREDIT OPPORTUNITY ACT.

Mr. Chairman and Members of the Committee:

I appear upon behalf of the Kansas Association of Finance Cos., Inc., the state trade association for consumer finance companies in Kansas. Our members have approximately 250 offices in 54 cities and towns in Kansas, and held approximately 90 percent of the 217 million loan outstandings held at the end of 1976 by loan licensees under the Kansas Uniform Consumer Credit Code.

Our association wants to be of record in its endorsement of the objectives and goals of the Equal Credit Opportunity Act. I can say categorically that our members who are primarily engaged in the business of lending to the lower half of the economic spectrum except for those generally classified as being in the poverty classification, have not and do not engage in any of the discriminatory acts proscribed by the Federal Equal Credit Opportunity Act. However, we are opposed to the state of Kansas adopting the Federal act as state law. I would like to spend my allotted time before the Committee giving the reasons for this opposition and not to a discussion of the merits of ECOA.

In order to appreciate the consequences of enacting the Federal Equal Credit Opportunity Act into Kansas law, I would like to review the Federal Truth-in-Lending Act and its subsequent history. Also to be considered are the limitations of the Kansas Constitution on the prospective adoption of federal statutes, regulations and administrative opinions.

The federal Truth-in-Lending Act was effective in October of 1968. One of its provisions is that any state which would enact the federal act and show that it had the ability to administer and enforce the act, could apply to be excepted from federal administration and enforcement. The federal Truth-in-Lending Act, the Equal Credit Opportunity Act and other federal consumer credit acts have a like provision seemingly to encourage the states to adopt like acts.

The theory of these provisions, I suppose, is that the federal government shall lead and the states shall follow, or an acknowledgment that the states can do the federal job and bring government closer to the people. Our association concluded that it would be easier and more convenient to work with administrators located in the state capitol, rather than federal administrators located in regional offices and Washington. We worked for the enactment of the Federal

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Truth-in-Lending Act in the 1969 Kansas Legislature, which passed in the form of S.B. 125. This enactment was an almost identical enactment of the federal act, word for word. While I don't know how many states enacted the federal Truth-in-Lending Act, the number that have received the federal exemption since 1969 is five. (Conn., Maine, Mass., Okla. and Wyoming). It is the general consensus, that there will be few, if any other states to apply.

When you realize that even if a state is exempted from Truth-in-Lending, the fact is that all federal banks, savings associations, credit unions and production credit unions still would fall under the federal act, since they are federally authorized institutions.

When you further realize that in addition to the federal Truth-in-Lending Act, consisting of 145 sections, we have:

1. Reg. Z running from 20-30 pages depending on the size of the page;
2. Some 1500 interpretative opinion letters, and,
3. Approximately 5000 reported court decisions,

one can appreciate the immensity of the undertaking when a state assumes to enact a federal law of this nature. Not only must the statute be adopted, but, also every regulation, and opinion letter, and any changes made in any of them, or, the state will be out-of-compliance.

What effect would this have? It means that if the state fails to adopt or change the state statute, regulation or opinion when the federal act, regulation or opinion is changed, that creditors could be placed in the position of having inconsistent rules to follow, or that the creditor would be responsible to so indicate on his forms. This situation could conceivably happen dozens of times in a given year, causing untold expense, uncertainty and law suits.

From this you can appreciate why we in the consumer finance business have come to the position, that altho we are fundamentally "States Righters", when the Congress preempts a field that has been constitutionally delegated to the federal government to the extent that it has with Truth-in-Lending, then the state should stay out of the field.

Expecially is this true, when, the federal Truth-in-Lending Act specifically confers jurisdiction on the state courts to enforce the Truth-in-Lending Act, and both the federal and state law provide that one cannot recover both a state and a federal penalty for the same violation.

Kansas adopted the Uniform Consumer Credit Code in 1973. K.S.A. 16a-3-206 purports to adopt the federal Truth-in-Lending Act by reference. There is a constitutional question as to whether the Kansas Legislature has the authority to prospectively adopt federal statutes, regulations and opinions. Because of this question, Section 11 of Art. XI of our state constitution was adopted so that our state income tax laws could coincide with the federal law, as changes were made in the federal law and regulations.

Another aspect of the federal Reg. Z (226.12(a)) is that if the state law is more restrictive, then the state law governs. This leaves the credit industry to judge which law is the most restrictive and as to which law governs.

The unquestioned truth about states attempting to enact and adopt federal law, regulations and administrative opinions, together with all of the court opinions, is that it is an absolute impossibility.

We submit that where the federal government and regulatory agencies preempt an area of the law to the extent that they have in Truth-in-Lending, that the states should remain out of the field. Remaining out of the field will:

a - Remove doubts as to whether the federal or state governs;
b - Remove any question as to what is preempted or which law is more restrictive;
c - Cause less legal uncertainties, suits and expenses to the credit industry in its compliance.

Especially do we urge this position when:

d - The federal law gives the state courts jurisdiction to enforce the federal law;
e - The state cannot exempt or control the federally authorized institutions (such as federal banks, savings associations, credit unions, etc.), which constitute the largest sector of credit grantors in Kansas;
f - There are no dual penalties for the same violation of either the federal and state law;
g - Kansas cannot constitutionally prospectively adopt federal acts, regulations or administrative opinions or amendments thereto other than those pertaining to income taxes;
h - The constitutional authority to delegate rule making authority for Kansas administrative agencies is not as broad as the authority is for federal agencies - so that many of the federal regulations could not be adopted by the Kansas agencies.

This last point is exemplified by the situation when the Kansas Attorney-General reviewed the Kansas application to the Federal Reserve Board for exemption under the 1969 Kansas enactment of the Truth-in-Lending Act. One of the regulations that the Federal Reserve had adopted was a regulation which placed any contract with four or more instalments under Reg. Z, regardless of whether there were any finance charges shown on the contract. Our then Attorney-General ruled that a Kansas administrative agency did not have the authority to adopt such a rule since there was no statutory authority for it in the Truth-in-Lending Act. Hence, the Kansas application did not go forward. However, the U. S. Supreme Court held subsequently that the Federal Reserve Board did have the authority to issue such a regulation.

Transporting this entire line of reasoning concerning the federal Truth-in-Lending Act and Reg. Z., we submit that there is little reason to expect any different development with the Equal Credit Opportunity Act than that which has occurred with the Truth-in-Lending.

The Federal Equal Credit Opportunity Act at Section 705 grants the Federal Reserve Board the right to grant a state exemption from federal regulation if it adopts a substantially similar law and has adequate provision for enforcement. This is just like the Truth-in-Lending Act.

At Section 706, the state courts are granted jurisdiction for enforcing the Federal Equal Credit Opportunity Act.

True to fashion, the Federal Reserve Board has adopted Regulation B consisting of 35-40 pages, and some 85-100 administrative opinions have been issued since the effective date of ECOA. I do not know the number of case decisions, but there is every reason to expect a flood-tide as soon as the statutes and regulations and their meanings are understood by the bar and enforcement agencies.

All of the reasons I enumerated in regard to the Federal Truth-in-Lending Act, as to why it is better for the state to remain out of a federally preempted area are equally applicable to the federal Equal Opportunity Act. Those are:

a - To remove doubt as to whether the federal or state law governs;
b - To remove any question as to what is preempted or which law is more restrictive;
c - To cause less legal uncertainties, suit and expenses to the credit industry in its compliance;
d - The federal law gives the state courts jurisdiction to enforce the federal law;

e - The state cannot exempt or control the federally authorized institutions (such as federal banks, savings associations, credit unions, etc.) which consititute the largest sector of credit grantors in Kansas.

f - There are no dual penalties for the same violation of either the federal or state laws;

g - Kansas cannot constitutionally prospectively adopt federal acts, regulations or administrative opinions or amendments thereto except in regard to income taxes;

h - The constitutional authority to delegate rule making authority for Kansas administrative agencies is not as broad as the authority is for federal agencies - so that many of the federal regulations could not be adopted by the Kansas agencies.

For the reasons stated, we urge that the Committee recommend to the Legislature that it not enact a Kansas copy of the federal Equal Credit Opportunity, and also, for the same reasons, we urge the repeal of K.S.A. 16a-3-206, the section of Kansas Uniform Consumer Credit Code that adopts the federal Truth-in-Lending Act by reference, and, K.S.A. 50-701, et seq., which enacted word for word, the federal Fair Credit Reporting Act.

I would like to conclude by bringing to the Committee's attention a situation concerning the interaction of the laws of the federal government and the states, that has a far greater impact upon the states than copying federal acts, word for word, when to do so - has no real meaning.

By reason of the court interpretation of the commerce clause of the federal Constitution, the federal government has increasingly invaded areas of the law formerly thought or at least to be considered, the province of the states.

In addition, by reason of the passage of the Moss-Magnuson Act, 2 years ago, the Congress has specially authorized the Federal Trade Commission to adopt regulations and rules pertaining to any subject which even "affect" commerce.

The magnitude of this authorization is far beyond the scope of of this hearing, but, the effect of this authority is that not only may the Congress preempt the states in those matters pertaining to commerce, but, it has authorized the Federal Trade Commission to regulate those matters which even "affect" commerce. As a result we have a federal administrative agency issuing regulations, which can and do purport to repeal state statutes.

An example of this authority can be seen in Regulation B under the Equal Credit Opportunity Act, concerning loans to a husband and wife. In almost every state consumer loan act (including Kansas) there was a provision prohibiting more than one loan to a married couple. This was to prevent an obvious means of lenders being able to charge a higher rate by making two loans rather than one.

By one fell swoop of a federal administrative agency in Washington which is not responsible to the electorate, a protective provision enacted by almost all of the state legislatures in the United States, was repealed by the federal concept of preemption. This is only one of many such situations.

It is presently planned by the Federal Trade Commission to conduct hearings on proposed regulations which would also have the effect of repealing various state statutes all over the United States, including those of Kansas. To give you an example, one of these proposals would prohibit any lender from taking any property as collateral which is exempt from attachment, execution or other process, whether real or personal property, which is owned or due to a consumer, except as a purchase money security interest, with the further exception that if the proceeds of a personal loan are not to be applied to the purchase of consumer goods, then a lender could take a security interest in property other than in household goods.

The adoption of such a regulation by the Federal Trade Commission would repeal present Kansas law which permits exempted property to be subject to execution if, both husband and wife consent thereto in a loan transaction.

The effect of this regulation in Kansas would be catastrophic to both the borrowing public and the credit grantors. Since a married couple's home and one acre in an incorporated city, a home and 160 acres outside an incorporated city, specified household goods, and other personal property, tools of trade and professional equipment (see attached statutes) are exempt in Kansas, it does not take a genius to see that the average citizen in Kansas will be denied his home, car and furnishings as assets to be used as collateral under such a rule.

The Federal Trade Commission and other federal agencies have issued or propose to issue regulations affecting the funeral homes, optometrists, pharmacists, all of which would repeal state statutes by preemption. The effect in each instance has been that in areas formerly thought to be a matter of state control, we are now dealing with federal agencies which are issuing regulations to repeal or supercede state laws. A continuation of this endeavor will inevitably reduce to a nullity any state control over commercial activity; since there is no activity that does not "affect" commerce.

We submit that this committee could perform a real service for the citizens of Kansas and the relationship between the federal government and the states, if it would embark upon a study of this overall problem of the federal government's invasion into these traditional state areas of control.

The Committee could easily get a picture of this problem by inviting representatives of the state associations for those businesses and professions which have been the subject of this federal favor, such as credit grantors, the optometrists, funeral directors and pharmacists, to discuss the effect of the repeal of state statutes by federal regulation.

Finally, the Committee could urge that the state appear by way of the governor, the attorney-general, or other appropriate state administrator at the various Federal Trade Commission and other federal agency hearings to present these issues from the viewpoint of state government.

Source or prior law: L. 1905, ch. 154, § 1; R. S. 1923, 60-3503.

Cross References to Related Sections:

Constitutional homestead exemption, see Kan. Const., art. 15, § 9.

Research and Practice Aids:

Homestead⇐118.
Hatcher's Digest, Homestead §§ 44 to 52.
C. J. S. Homestead § 129 et seq.
Gard's Kansas C. C. P. 60-2303.
Vernon's Kansas C. C. P. — Fowkes, Harvey & Thomas, 60-2303.

CASE ANNOTATIONS

Prior law cases, see G. S. 1949, 60-3503.

60-2304. Personal property of family; articles exempt. Every person residing in this state, and being the head of a family, shall have exempt from seizure and sale upon any attachment, execution or other process issued from any court in this state, the following articles of personal property:

(1) The furnishings, equipment and supplies, including food, fuel and clothing, for the family for a period of one (1) year on hand and reasonably necessary at the principal residence of the family.

(2) Ornaments of the debtor's person, including jewelry, having a value of not to exceed five hundred dollars ($500).

(3) One means of conveyance regularly used for the transportation of the family or for transportation to and from his or her regular place of work.

(4) A family burial plot or crypt.

(5) The books, documents, furniture, instruments, tools, implements and equipment, the breeding stock, seed grain or growing plant stock, or the other tangible means of production regularly and reasonably necessary in carrying on his or her profession, trade, business or occupation in an aggregate value not to exceed five thousand dollars ($5,000). [L. 1963, ch. 303, 60-2304; L. 1965, ch. 357, § 1; L. 1970, ch. 242, § 1; July 1.]

Source or prior law: G. S. 1868, ch. 38, § 3; R. S. 1923, 60-3504; L. 1937, ch. 269, § 1.

Cross References to Related Sections:

Responsibility as to attaching property claimed as exempt, see 60-706 (*b*) (3).

Research and Practice Aids:

Exemptions⇐16, 37 et seq.
Hatcher's Digest, Exemptions §§ 5 to 19.
C. J. S. Exemptions §§ 17, 31 et seq.
Gard's Kansas C. C. P. 60-2304.
Vernon's Kansas C. C. P. — Fowkes, Harvey & Thomas, 60-2304.
Vernon's Kansas Forms, C. C. P.—Hatcher § 23.2.

Law Review and Bar Journal References:

Mentioned in "Some Comments on the New Code of Civil Procedure," Emmet A. Blaes, 12 K. L. R. 73, 80 (1963).

Discussed in 1963-65 survey of debtor-creditor law, Robert B. Morton, 14 K. L. R. 251, 260, 261 (1965).

Discussed in survey of Kansas law on real and personal property (1965-1969), 18 K. L. R. 427, 431 (1970).

CASE ANNOTATIONS

Prior law cases, see G. S. 1949, 60-3504 and the 1961 Supp. thereto.

Annotations to G. S. 1949, 60-3504:

1. Distinction exists between this exemption and the unconstitutional privileges sought to be granted in 17 1725 Neely v. St. Francis Hospital & School of Nursing, 192 K. 716, 721, 722, 391 P. 2d 155.

2. Right of exemption may be waived at time execution is levied. State v. Goering, 193 K. 307, 310, 392 P. 2d 930.

60-2305. Personal property of person not head of family; articles exempt. The following property only shall be exempt from attachment and execution, when owned by any person residing in this state, other than the head of a family: (1) The personal clothing of debtor; (2) ornaments of the debtor's person, including jewelry, having a value of not to exceed five hundred dollars ($500); (3) the books, manuals, tools and instruments necessary to be used by any mechanic, miner, electrician, or other skilled or semiskilled artisan or technician in carrying on his or her trade or craft, or the library, instruments and office furniture necessarily used by any professional man, in an aggregate value for any such person not to exceed two thousand dollars ($2,000). [L. 1963, ch. 303, 60-2305; L. 1965, ch. 357, § 2; L. 1970, ch. 242, § 2; July 1.]

Source or prior law: G. S. 1868, ch. 38, § 4; R. S. 1923, 60-3505.

Research and Practice Aids:

Exemptions⇐21, 37 et seq.
Hatcher's Digest, Exemptions §§ 5 to 19.
C. J. S. Exemptions §§ 20, 31 et seq.
Gard's Kansas C. C. P. 60-2305.
Vernon's Kansas C. C. P. — Fowkes, Harvey & Thomas, 60-2305.

Law Review and Bar Journal References:

Discussed in 1963-65 survey of debtor-creditor law, Robert B. Morton, 14 K. L. R. 251, 260, 261 (1965).

CASE ANNOTATIONS

Prior law cases, see G. S. 1949, 60-3505 and the 1961 Supp. thereto.

Annotation to G. S. 1949, 60-3505:

1. Distinction exists between this exemption and the unconstitutional privileges sought to be granted

1. Mortgagee cannot remove property to foreign county to make sale. Scott v. Davis, 4 K. A. 488, 494, 44 P. 1001.

2. Mortgagee may maintain replevin after condition broken. Brookover v. Esterly, 12 K. 149, 151.

3. Mortgagee liable to mortgagor only for surplusage from sale. Denny v. Faulkner, 22 K. 89, 100.

4. Provision "sale without notice after condition broken," may be enforced. Harris v. Lynn, 25 K. 281; Reynolds v. Thomas, 28 K. 810; Foy v. Comanche County, 69 K. 206, 208, 76 P. 859.

5. Parties may agree upon method for disposal of mortgaged property. Denny v. Van Dusen, *Adm'r*, 27 K. 437, 440.

6. Section inapplicable to mortgage-foreclosure sale under special execution. Liberty Savings & Loan Ass'n v. Jones, 143 K. 422, 426, 54 P. 2d 937.

7. Cited; expense of repossessing chattel not lienable under artisan's lien law (58-202). National Bond & Investment Co. v. Midwest Finance Co., 156 K. 531, 537, 134 P. 2d 639.

8. Purchaser from mortgagee on default not compelled to accept payment and release mortgage. Grant v. Stryker, 156 K. 682, 684, 135 P. 2d 534.

9. Mortgagor's waiver of right to redeem held valid. Fourth National Bank v. Hill, 181 K. 683, 701, 314 P. 2d 312.

10. Chattel mortgage terms held to make notice hereunder unnecessary. Watkins v. Layton, 182 K. 702, 705, 324 P. 2d 130.

11. Discussed and applied; district court action to establish alleged personal property mortgage constituted demand; probate court jurisdiction. Shields v. Fink, Executrix, 190 K. 17, 27, 372 P. 2d 252.

58-310. [G. S. 1868, ch. 68, § 18; R. S. 1923, 58-310; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.]

CASE ANNOTATIONS

1. Risk of delay upon mortgagee after mortgagor demands sale. Bank v. Leslie, 72 K. 401, 404, 83 P. 984.

2. Mortgagor entitled to have property sold after mortgagee obtains possession. Snider v. Windsor, 77 K. 67, 93 P. 600.

3. Possession taken by mortgagee when he deems himself insecure. Thorp v. Fleming, 78 K. 237, 242, 96 P. 470.

58-311. [G. S. 1868, ch. 68, § 19; R. S. 1923, 58-311; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.]

CASE ANNOTATIONS

1. Cited; expense of repossessing chattel not lienable under artisan's lien law (58-202). National Bond & Investment Co. v. Midwest Finance Co., 156 K. 531, 537, 134 P. 2d 639.

2. Punitive damage award for failure to account for surplus; affirmed. Watkins v. Layton, 182 K. 702, 705, 706, 324 P. 2d 130.

58-312. Exempt personal property; joint consent of husband and wife required. It shall be unlawful for either husband or wife (where that relation exists) to create any lien or security interest other than a purchase money security interest upon any personal property owned by either or both of them, and now exempt by law to resident heads of families from seizure and sale upon any attachment, execution or other process issued from any court in this state, without the joint consent of both husband and wife; and from and after the time when this act shall take effect no agreement creating such a security interest shall be valid unless executed by both husband and wife: *Provided*, That this act shall not be construed to invalidate any such lien or security interest except so far as relates to the exempt property covered thereby. [L. 1889, ch. 176, § 1; L. 1901, ch. 103, § 1; R. S. 1923, 58-312; L. 1965, ch. 564, § 410; Jan. 1, 1966.]

Research and Practice Aids:

Husband and Wife⇐169(2).

Hatcher's Digest, Exemptions §§ 30 to 35.

C. J. S. Husband and Wife § 345.

Affidavit of ownership attached to chattel mortgage, Vernon's Kansas Forms § 4156.

Designating mortgagor, Kansas Practice Methods, §§ 304, 307, 931.

Signatures and addresses, Kansas Practice Methods § 925.

Law Review and Bar Journal References:

Case in annotation No. 20 below discussed in 1955-56 survey of debtor-creditor law, F. J. Moreau, 5 K. L. R. 239, 246, 247 (1956).

Mentioned in discussing secured transactions under UCC, J. Eugene Balloun, 5 W. L. J. 192, 199 (1966).

Discussed in survey of Kansas law on real and personal property (1965-1969), 18 K. L. R. 427, 431 (1970).

CASE ANNOTATIONS

1. Effect of insanity of one of parties; replevin; priority; evidence. State Bank v. Norduft, 2 K. A. 55, 59, 43 P. 312.

2. Exemption laws may be waived for rent without wife joining. Kroenert v. Mead, 59 K. 665, 666, 54 P. 684.

3. Mortgage signed by husband alone, valid only against unexempt property. Skinner v. Bank, 63 K. 842, 844, 66 P. 997.

4. Mortgage void unless both husband and wife consent to same. Alexander v. Logan, 65 K. 505, 507, 70 P. 339; Searle v. Gregg, 67 K. 1, 3, 72 P. 544.

5. Mortgage on exempt threshing machine requires joint consent. Jackman v. Lambertson, 71 K. 138, 80 P. 55.

6. Provision of this section not applicable to purchase-price mortgage. Boggs v. Kelly, 76 K. 9, 11, 90 P. 765.

7. Husband may deliver property to creditor without consent of wife. Beach v. Fireovid, 84 K. 357, 359, 114 P. 206.

8. Wife establishing exempt quality not estopped by representations of husband. Wickham v. Bank, 95 K. 657, 658, 149 P. 433.

9. Wife's consent not procured; mortgaged property held not exempt. Bank v. Shepherd, 105 K. 206, 207, 182 P. 653.

10. Mortgage to secure purchase-price of automobile; consent of wife. The State v. Perkins, 112 K. 455, 456, 210 P. 1091.

Credit Industry Going Full Steam Ahead

Getting Women to Understand the New Laws Is Problem

By JANE BRYANT QUINN
Washington Post

NEW YORK — "The problem with women and credit today is not with the credit industry, it's with the women themselves." That surprising view is held by Santa Fe attorney Anne Bingaman, formerly of the Federal Reserve System in Washington, D.C. During the period that the credit industry was lobbying to water down the Equal Credit Opportunity Act, Bingaman was a lucid and effective voice in the law's defense.

Now, however, the law that promises women equal credit rights with men is firmly in place. The credit industry is going full steam ahead, to see that the law is honored. Lenders here and there may be dragging their heels. But by and large, credit worthy women should have no difficulty getting loans or opening charge accounts.

The problem now, says Bingaman, is getting women to understand what the new law means, and persuading them to take advantage of it. She identifies three key areas where women misunderstand credit:

ONE — Many married women don't understand why it's necessary to have credit in their own names. Their lives are going

smoothly as is, and they see no reason to worry about their own credit history.

But the unhappy fact is that some 85 per cent of wives outlive their husbands. More than 35 per cent of wives will get a divorce. When widowed or divorced, women will need their own charge accounts and perhaps a loan. To get them, they will have to be able to prove that they used credit wisely in the past.

At present, charge accounts are reported in the husband's name only — so wives have no proof that they are personally reliable in paying bills. Under the law, new charge accounts and loans will be reported in the wife's own name as well as the husband's. But the wife's present accounts will remain in her husband's name unless she takes positive action to change it.

By all means do so! This could be enormously important some time in the future. Stores should be sending the wife a form (if they haven't already) asking if she wants her name on the charge account. Fill in the form, saying "Yes." Wives who haven't received a form should call their department stores and ask for one.

Please note that this does not take anything away from the husband. The credit history continues to be reported under his name. It simply adds the wife's name to the account, as someone equally entitled to its credit history. Give your name as "Mary Smith Jones" not "Mrs. David Jones."

TWO — Many married women do not see themselves as credit worthy, independently of their husbands. Therefore they don't take the interest in credit that they really should for their own protection.

Under the new credit laws, women who have income are just as credit worthy as men in the same financial position. If you're a wife and were turned down for a loan today, it's likely to be because the lender objectively doubts that you can repay, rather than because of your sex. Married women seeking their own loans or charge accounts can, if they wish, be evaluated independently of their husbands.

Women who don't work outside the home also can establish their own credit history, and should. How to do so is outlined above. Homemakers don't have to work outside the home in order to get the benefit of a credit history.

THREE — Some women are afraid to tell their husbands they want credit in their own names. They think it might be interpreted as a sign that they want a divorce or that they don't trust their husbands to take care of them.

The way to handle this, says Bingaman, is to treat a personal credit history as if it were a life insurance policy. The husband takes out life insurance in the wife's behalf so she will have money if something happens to him. He should be equally interested in leaving his spouse with a reliable credit history, so she can borrow money if it ever becomes necessary.

Robert Irvine, of Commercial Credit Corp. says that male hostility to credit for their wives isn't nearly as widespread as he first expected. "We find that large numbers of men want information on how to establish credit histories for their wives," he says. "They realize that it's something their wives should have.

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KANSAS
SAVINGS & LOAN
LEAGUE

JAMES R. TURNER
PRESIDENT

SUITE 612 • 700 KANSAS AVE. • TOPEKA, KANSAS 66603 • PHONE (913) 232-8215

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July 27, 1977

TO: SPECIAL COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

FROM: JIM TURNER, KANSAS SAVINGS AND LOAN LEAGUE

RE: EQUAL CREDIT OPPORTUNITY

The federal Equal Credit Opportunity Act was signed into law, March 23, 1976, with the basic implementing regulations (Regulation B) of the Federal Reserve Board becoming effective on March 23, 1977.

The ECOA law and regulations prohibit discrimination in the granting of credit on the basis of sex, marital status, race, color, religion, national origin, age, receipt of public assistance benefits, and the good faith exercise of rights under the Consumer Credit Protection Act.

The ECOA law and Regulation B impact lenders as to the type of information which may be requested, use of credit tests, credit practices, use of forms, notification to borrowers, furnishing credit information, and the retention of records.

To ascertain compliance the Kansas Savings and Loan League has conducted two different workshops for our members. While we are not opposed to the concept of equal credit we would point out to the committee that there has been substantial costs involved in complying with the new law. Accordingly, we are less than enthusiastic as to suggestions for a state ECOA law until sufficient time has been allowed for the full implementation of the federal act.

J.T.

JRT:bw

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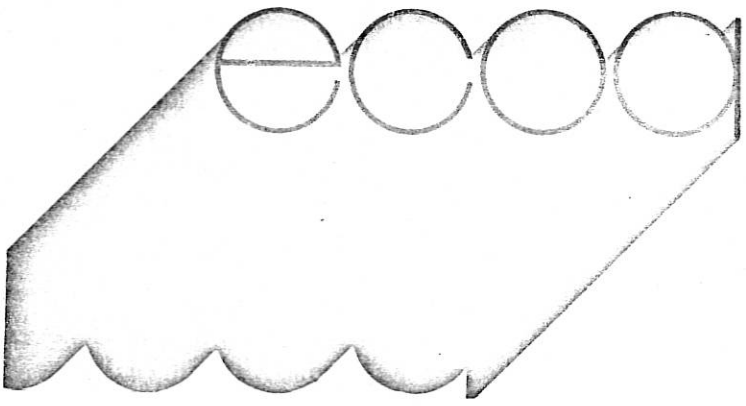
A JOURNAL HOW-TO-DO-IT ARTICLE

Complying With ECOA



Long before the revised Equal Credit Opportunity Act and its Regulation B became law on March 23, 1977, California Federal's chief executive officer, Robert R. Dockson, had ordered a study of its probable impact on the savings and loan industry. Mr. Dockson is particularly aware of the workings of Regulation B as a result of serving on the Federal Reserve Board of Governors' Consumer Advisory Council since September of 1976. He knew that the effect of the legislation would be significant, and it was obvious to the association that compliance would require meticulous planning.

Although we had not, at that time, explored all of the ramifications for our own $4 billion institution, we were prepared to swing into action the instant the final regulations were received early this year. The regulations cover applicants for every type of loan from mortgages to commercial credit.

Because the regulations are voluminous and difficult to interpret, our first step was to prepare a concise 10-page summary of them for our own use. Our legal staff, with the help of our loan people, carefully translated the original legalistic language of the regulations into layman's terms and, with that document in hand, we formed an ECOA compliance committee consisting of 2 attorneys and some 20 department heads from our loan division. This committee then studied the newly written guidelines, which are printed with this article, to ferret out all of the operational modifications which might become necessary under the new regulations.

Obviously, our computer specialists would have to design a program to allow credit information to be stored and retrieved in either the husband's or wife's name. And our record retention system would have to comply with the 25-month retention requirement.

Then, since even an inadvertent use of an old loan application form could result in severe penalties, it was essential that we redesign all related forms and destroy those being replaced.

We adjusted our computer and record operations and incorporated the required revisions in the new application forms—changing their color to assist employees in distinguishing between old forms and the new ones—and instructed each of our managers to personally locate and destroy all old forms before March 23.

Our next need was to devise a workable plan to disseminate ECOA information company-wide and to impress upon our staff the importance of compliance with provisions of the new law.

Face-to-Face Meetings

Face-to-face group meetings were chosen as the most effective means of getting the nondiscrimination story told, even though planning for the meetings

was complicated by our widespread office locations and by the number of people we needed to reach. California Federal has 75 branches from San Francisco to San Diego and additional loan operations in offices of our subsidiary. Nevertheless, not only did we communicate with our loan staff in all of our offices, we made our savings personnel aware of the new regulations as well. Our internal auditors also were briefed and our escrow officers were trained.

Additionally, we needed to contact many outside people such as brokers, builders, and loan representatives who might have occasion to give out our credit applications or assist applicants in preparing our loan forms.

In short, considering the total impact of the new regulations, we needed to reach practically everyone who might, in one way or another, trigger any liability on the part of California Federal under the revised Equal Credit Opportunity Act.

Seven meetings at locations throughout California were chaired by representatives from our loan and legal divisions. Employee attendance was required at one session and registration provided control.

Staff members had already studied our guidelines, so the meetings were conducted as working seminars with emphasis on the participants' questions. Many of the inquiries centered on how to evaluate income from public assistance programs, especially with regard to college students and income from unemployment payments. Another area of concern was the need for and the timing of the Notice of Adverse Action.

Employees left the seminars with a reminder to call California Federal's legal officers directly for further clarification if and when it was needed.

Feedback

While calls to the legal division have been numerous, problems have not been grave. In fact, as we expected, most problems concern adjustments to the time-consuming new details and procedures of Regulation B.

Calls indicate that the major difficulty facing our loan personnel is the frequent failure of applicants to complete or initial the voluntary information box on our revised application form. The box is included for Government monitoring purposes. To overcome this problem, we are now devising a cover letter which will call the loan applicant's attention to the information box and explain the necessity for completing or initialing it.

Followup

Now that we have successfully completed revamping our loan system, we are beginning to consider followup measures.

Among these is publishing and distributing a newsletter to keep our personnel up to date on changes in the regulations and to provide answers to frequently asked questions. We may also continue to use our house publication and our new-employee orientation sessions to keep our staff informed. Additional followup Statewide seminars are being planned.

At the moment, we are relying on our loan department heads and supervisors, as well as a well-informed staff, to maintain ongoing training and to insure compliance.

The Equal Credit Opportunity Act is a major piece of legislation to which we responded with serious attention, thoughtful planning, and thorough training as we worked within the provisions of Regulation B. Because we also provide followup support, we feel confident in the ability of our staff to satisfy the requirements of the law, as well as to fulfill our obligations to the customers we serve.

California Federal's Equal Credit Guidelines

Preface

As a result of 1976 amendments to the Consumer Credit Protection Act and to Regulation B thereunder, the following guidelines are to be followed in the credit underwriting of real estate loans.

Note: Noncompliance with these guidelines will expose the association to enormous liability. Individuals may recover up to $10,000 in punitive damages; class action plaintiffs, up to $500,000.

Note: These guidelines are primarily concerned with consumer credit applications. Nonetheless, many of the requirements are applicable to business and commercial loans. Unless the text provides otherwise, each guideline is to be followed in connection with both consumer and commercial credit.

Note: Sections designated by an asterisk (*) are of possible interest only to the Consumer Loan Division.

It is the policy of this association that:

I. Generally

A. No director, officer, or employee of this association shall discriminate against any person who requests or receives credit, or who co-signs, guarantees, or is in any way involved in a credit transaction, on any of the following prohibited bases:

1. Race, color,
2. National origin,
3. Religion,
4. Sex,
5. Marital status,

6. Age,
7. Receipt of income from public assistance program(s),
8. Good faith exercise of rights under the Consumer Credit Protection Act, or
9. Any relationship of the applicant with members of a protected class.

B. These prohibitions apply to every aspect of every credit transaction (e.g., applications and other requests for information, procedures for investigating credit, underwriting standards, credit forms, etc.).

C. It is possible that a seemingly nondiscriminatory credit standard (e.g., a telephone listed in the name of applicant) may actually operate to discriminate on a prohibited basis (most households list their telephone in the husband's name). In the event any *neutral* credit standard is observed to result in discrimination on one of the bases stated in "A", above, the matter is to be promptly brought to the attention of management and the legal division.

II. Advertising

A. No advertising campaign or other public statement made by this Association shall improperly (see Part I above) discourage applicants or prospective applicants from applying for credit or pursuing an application for credit.

III. Sex and marital status

A. On application: No applicant for credit shall be asked to designate his or her sex.

B. Courtesy titles: No applicant for credit shall be asked to designate a courtesy title (i.e., Mr., Mrs., Miss, Ms.) unless he or she is first clearly informed that such a designation is *optional.*

C. Childbearing: No applicant for credit is to be asked about his or her birth control practices or childbearing intentions or abilities. In evaluating credit, no consideration is to be given to the fact that future childbearing or child care could interrupt or diminish income. No aggregate statistics regarding childbearing or child care are to be utilized in the underwriting process.

1. Dependents: Nonetheless, an applicant *may* be asked about the number of dependents the applicant presently has, and the expenses associated with those dependents.

D. Alimony: No applicant is to be asked whether he or she receives income from alimony, child support, or separate maintenance unless it is first *conspicuously* disclosed to the applicant that disclosure of this income is optional, and that it need not be revealed unless the applicant wishes us to rely on such income in assessing the applicant's creditworthiness.

1. Discounting prohibited: In assessing income from alimony, child support, and separate maintenance, no across-the-board discount of this information is to be utilized.
2. Evaluation permitted: However, an individualized assessment of the *quality* of this income is always permitted, including whether the payments are received pursuant to a court order or private agreement; how long and how regularly they have been made; and the creditworthiness of the payor.
3. Liability for alimony: An applicant may always be asked whether he or she is obligated to *make* alimony, child support, or separate maintenance payments.

IV. Spouses and marital status

A. On application: In nearly all cases, an applicant may be required to designate his or her marital status. Note the limited exception described in (C), below.

1. Correct form: When an applicant is asked his or her marital status, the only permitted responses are "married," "unmarried," and "separated;" although an applicant may be told that "unmarried" includes "widowed," "divorced," and "single."
2. Business and commercial credit: When an applicant seeks credit for business or commercial purposes, the applicant may always be asked to designate his or her marital status.

B. Questions about spouse: In nearly all cases, the spouse of the applicant may be asked any question that may properly be asked of the applicant. Note the limited exception described in "C", below.

*C. Exception: In the following case, an applicant may neither be asked for his or her marital status, nor may question about the applicant's spouse be asked. When the applicant:

1. Requests individual, *unsecured* credit; AND
2. Relies solely upon his or her own income or property; AND
3. Does not reside in California or another community property state; AND
4. Is not relying upon alimony, child support, or separate maintenance income.

D. Signature of spouse: The signature of an applicant's spouse may be required on loan documents and/or title documents when:
   1. Both spouses are obligated on the loan; OR
   2. Only the applicant is obligated on the loan, but we believe that the signature of the spouse is necessary to create a valid lien, pass clear title, waive inchoate rights, assign earnings, or, generally, when the spouse has or will have an interest in the security property; OR
   3. The applicant requests individual, *unsecured* credit, but cannot meet our credit standards alone, after including community property of which he or she has management and control (in this situation, we may request the signature of the spouse on any document we believe necessary to render the property relied upon available in the event of default).

*E. Cosigners: We may generally require a cosigner or other guarantor whenever any applicant fails to meet our credit standards, but we may not *require,* in the case of a married applicant, that the cosigner or guarantor be the spouse of the applicant.

F. Telephone listings: No consideration is to be given in the underwriting process to the fact that the applicant's telephone number is or is not listed *in the name of* the applicant.
   1. Consideration may be given to the fact that there is a telephone in the applicant's residence.

G. Other credit accounts: In evaluating the credit history of an applicant, we shall consider all of the following:
   1. All joint liability *and joint use* credit accounts of the applicant and his or her spouse.
   2. *At the request of the applicant,* the history of any credit account carried in the name of the applicant's spouse which the applicant can demonstrate accurately reflects the applicant's creditworthiness.
   3. *At the request of the applicant,* any information supplied by the applicant which indicates that the credit history we have does not accurately reflect the creditworthiness of the applicant.

H. Part-time income: Part-time income is not to be excluded from our assessment of creditworthiness, nor is it to be discounted on an across-the-board basis. We may, of course, assess the quality of a particular item of part-time income, that is, its amount, and the probability that it will continue.

I. Names on account: No applicant shall be prevented from obtaining a loan in a birth-given first name and any one of the following surnames: (a) birth-given, (b) spouse's, or (c) any combination of birth-given and spouse's.

*J. Changes in account terms: No mandatory re-application or modification of loan terms may be required *solely* because an existing borrower changes his or her name as the result of a change in marital status:
   *1. Permitted changes: Re-application may be required following a name change resulting from a change in marital status, when the borrower relied upon his or her spouse's income in obtaining the original loan.

V. Age

A. Applications: An applicant *may* be asked his or her age.
   1. Qualification: Age may be taken into consideration in the underwriting process only insofar as it has a "demonstrable relationship to the determination of creditworthiness." For example:
      a. Life expectancy, impending retirement, the cost of realizing on the security at death, and the significance of a given length of residence (to name a few) all have a "demonstrable relationship" to creditworthiness, and to this extent the age of the applicant may be taken into account in evaluating an application.
      b. Unproven general assumptions (e.g., "young people pay their bills late") based upon the youth or age of the applicant do *not* have a "demonstrable relationship" to the determination of creditworthiness and may not be utilized.

B. Retirement income: Retirement income is not to be excluded from our assessment, nor is it to be discounted on an across-the-board basis. We may, of course, assess the quality of a particular item of retirement income, that is, its amount and the probability that it will continue.

C. Credit insurance: No applicant shall be refused credit solely because the applicant has been unable to obtain credit, life, health, accident, or disability insurance on account of his or her age.

VI. Public assistance income

A. General rule: An applicant may be asked whether any of his or her income is derived

from a public assistance program (e.g., food stamps, AFDC, disability, unemployment, etc.).

1. Qualification: The fact that an applicant's income is derived in whole or in part from a public assistance program may be considered in the underwriting process only to the extent that it is "demonstrably related to the determination of creditworthiness." For example:
   a. The length of time the applicant has been receiving public assistance, whether the applicant intends to remain in the payor jurisdiction, and the age, etc., of the applicant's dependents all involve an assessment of the *likelihood that the income will continue* and the amount thereof, which is "demonstrably related" to the determination of creditworthiness. This type of individualized assessment is permitted.
   b. Unproven assumptions ("All welfare recipients are deadbeats") are not "demonstrably related" to the determination of creditworthiness and may not be utilized.

VII. Race, color, national origin

A. Applications: No applicant is to be asked to designate his or her race, color, national origin, or religion.
   1. Qualifications:
      a. An applicant may be asked his or her permanent residence or immigration status, and followup questions may be asked to determine the extent of our legal remedies in the event of default.
      b. In a separate portion of every application for a purchase-money 1-4 family loan, we *must* include a specified form asking the applicant to reveal his or her race/national origin. The answers to this *optional* question will be used solely to monitor compliance with the ECOA.

VIII. Notifications

An applicant for consumer credit is entitled to notification of the action taken on his or her application, as follows:

A. Definition: For the purposes of these guidelines, the term "adverse action" means:
   1. The refusal to grant credit more or less on the terms requested by the applicant; OR
   2. The refusal to increase the amount of credit available to an existing borrower, when the borrower has requested an increase in accordance with standard procedures.

"Adverse actions" do *not* include:

1. Counteroffers, when the counteroffer is accepted by the applicant.
2. Changes in loan terms expressly agreed to by an existing borrower.
3. Actions taken as the result of default or delinquency.
4. The refusal to extend credit which would violate State or Federal law or regulation.
5. The refusal to extend a *type* of credit (e.g., a credit card) which we do not offer. Note that a refusal to grant a 90 percent, uninsured loan *would* constitute "adverse action," since we *do* offer the type of credit (mortgage loans) requested.

B. When made:
   1. Generally: Within 30 days after receipt of a "completed application":
      a. Definition: An application is "complete" when all information we customarily obtain is assembled and all necessary Government reports and approvals are in.
      b. Completion by applicant: If the only documents or signatures necessary to complete an incomplete application are those of the applicant, the applicant is to be informed of the fact as soon as possible.
   2. Adverse action prior to completion: When adverse action is taken prior to the completion of an application, notification is to be made within 30 days of the adverse action.
   3. Adverse action on existing loan: When adverse action is taken on an existing loan, notification is to be made within 30 days of the adverse action. Note that adverse action does not include action taken as the result of delinquency or default.
   4. Counteroffers: When a counteroffer is made, notification is to be made within 90 days after the counteroffer is made if the counteroffer has not been accepted within that period.

C. Notification of approval: An applicant shall be notified, within 30 days, either orally or in writing, of the approval of his

or her application. No additional notice of approval need be given if the loan proceeds are forwarded to escrow within the applicable time period.

D. Notice of adverse action:
   1. Contents: Notice of adverse action must be in writing and contain:
      a. A statement of the adverse action taken;
      b. The ECOA notice;
      c. The name and address of the FHLB; AND
      d. A statement of the specific reasons for the adverse action.
         (1) Consumer credit reports: If adverse action is taken in whole or in part because of a report from a consumer credit reporting agency, the statement of specific reasons must contain the name, address, and telephone number of the agency.
      e. Outside credit information: If adverse action is taken in whole or in part because of information bearing on the applicant's creditworthiness obtained from an outside source other than a consumer credit reporting agency, the notice of adverse action must contain a statement informing the applicant that he or she may request the identity of that source in writing within 60 days.
   2. Rules on notice of adverse action:
      a. When more than one applicant is involved, notice need be given only to the primary applicant.
      b. When more than one creditor is involved, and the applicant accepted credit from another institution, notice need not be given.
      c. Notice may be given indirectly, through a third party, provided that our identity is disclosed to the applicant. If we rely upon a third party to provide notice, we shall: (i) provide the third party with the information necessary for notification in an accurate and timely manner, and (ii) maintain procedures designed to ensure compliance.
      d. Notification takes place *when the writing is placed in the mail,* addressed to the address of the applicant last shown in our records.

E. Business and commercial credit: Applicants for business or commercial credit need not be notified of adverse action unless a written request for specific reasons is received within 30 days after the applicant is informed of the adverse action.

IX. Retention of information

A. The following "prohibited information" may be retained in our records indefinitely:
   1. All information obtained prior to March 23, 1977;
   2. Information obtained from consumer credit reporting agencies;
   3. Information *volunteered* by the applicant or any other person; or
   4. Information collected for monitoring purposes.

B. The following information *must* be retained, as to each transaction, for 36 months following the notice of action taken:
   1. The application;
   2. Information collected for monitoring purposes;
   3. All written or recorded information used to evaluate the application and not returned to the applicant at his or her request;
   4. A copy of the Notice of Action Taken, including the specific reasons for the action taken (notes, if the reasons are given orally); and
   5. Any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B.

C. The above requirements must be complied with even when we need not notify the applicant of the action taken.

D. Business and commercial credit: When business and commercial credit is involved, information of any type *may* be retained, and no information *need* be retained beyond 90 days after adverse action has been taken.

X. Information for monitoring purposes

A. All applicants for residential (1-4 units, condos, co-ops) purchase-money loans, must be asked the following optional questions (either on the application form or on a separate form that refers to the application):
   1. Race/national origin, as follows:
      a. American Indian or Alaskan Native,
      b. Asian or Pacific Islander,
      c. Black,
      d. White,
      e. Hispanic, or
      f. Other (specify).
   2. Sex.

your income. He may, however, verify the regularity with which those payments are made.

15. Can I be asked about my birth control practices or child bearing plans?

You cannot be asked about them because they have nothing to do with your credit-worthiness. Also, a credit granter cannot use any statistical tables to predict the likelihood you will have children in the future. However, the credit granter can ask how many dependent children you may have, since they may reflect an additional financial obligation.

16. What is a community property state and why is it important to me in the extension of credit?

The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and the Commonwealth of Puerto Rico. These are states, generally speaking, where both husband and wife are co-owners of all property acquired during the marriage, legally responsible for each other's debts and obligations, and have equal or joint control of all property and income earned during the marriage. Therefore, a charge account belonging to the husband belongs equally to the wife and a credit granter can take legal action against either to collect a bill incurred by the other.

Also, in a community property state the credit granter may require the signatures of both the husband and wife on an application, if it is necessary to make any property used as security available to satisfy the debt in case of default.

17. Must I have my husband's signature on an application for credit?

No. You cannot be required to have your husband sign your credit application for a separate account if you are credit-worthy in your own right. The only time his signature can be required is if you live in a community property state and his signature is necessary to make property available to secure the extension of credit.

18. If my income is insufficient for credit and I need a cosigner, must my husband be that cosigner?

A potential credit granter can require a cosigner if your own income is insufficient, but he cannot require that cosigner to be your husband.

19. Will my income from a part-time job, pension or similar source be discounted in my credit application?

No. It cannot be discounted. Any income you receive from a part-time job, pension, investments, social security, or a public assistance program must be judged as ordinary income. However, a credit granter can consider how long you have been receiving those payments and how long they are likely to continue.

20. Can my accounts be closed or the terms changed just because I have reached a certain age or retired?

No. A credit granter cannot close or change the terms of your account unless there is evidence of an inability or unwillingness to repay the account.

21. If I am married, but have no job, can I get a credit account of my own?

Yes, but you will have to prove some source of income sufficient to repay the account. For example, in a community property state you might rely on your husband's income. In a non-community property state your husband or another credit-worthy person might guarantee payment of the account.

22. If I don't have any credit of my own now, what is the best way to get it without the help of someone else?

The very best way is to develop a good employment record and have both a checking and savings account. Then, open a small charge account with a local retail store, or get a secured loan from a financial institution for the purchase of something like an automobile. Pay these obligations promptly and you will develop your own good credit history. As your credit history and credit-worthiness develop, you will find you will be able to secure additional credit. Be careful. Don't over-extend yourself or you may hurt what you have worked so hard to build.

23. If I'm denied credit, must they tell me why?

Yes. The ECOA requires a credit granter to give you the specific reasons for a denial, and, if requested within 60 days, provide those reasons in writing. If the denial was based on information from a credit bureau, the credit granter must tell you the name, location and phone number of that credit bureau. Then you can review your credit history at the credit bureau. If you believe there was incorrect information in the credit report, the credit bureau must investigate for you and if you were right, issue a correction.

24. What do I do if I think I'm being discriminated against?

If you don't agree with the reasons listed in the denial notice, the first step is to contact the credit granter directly and talk it over.

Keep accurate records of all contacts you make. If you can't work things out to your satisfaction, you can always take your business to another credit granter. If you are convinced that illegal discrimination is involved, you can report the experience to the Federal Trade Commission or other appropriate federal agency enforcing the ECOA.

A Reminder . . .

The Equal Credit Opportunity Act is a very complicated law. This pamphlet is an attempt to provide you with many of the significant aspects of the law which assures you the right to be given equal consideration in any application for credit.

Good and responsible businesses welcome credit-worthy women as credit customers. Good and responsible credit bureaus recognize their role in maintaining credit histories for both men and women. After all, it's not only fair, but good business, since women make a majority of the country's credit purchases.

Associated Credit Bureaus, Inc.
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Form E-33 Printed in U.S.A. 5/77

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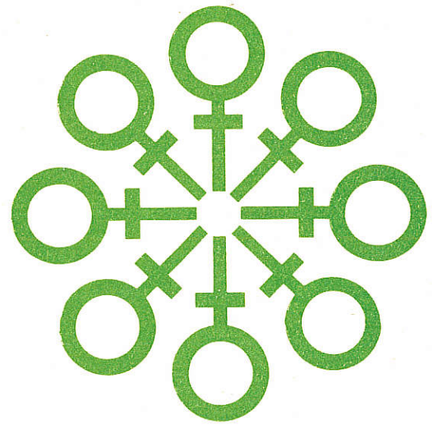
women



credit bureaus

and the equal credit opportunity act

Atch. I

In today's credit-oriented economy, your local credit bureau plays an important role in the development and expansion of credit privileges for millions of Americans. The credit bureau serves as a clearinghouse of consumer credit information. Under the rules of the Fair Credit Reporting Act of 1971, the credit bureau collects information from credit granters on how consumers pay their bills. This makes up your credit history or credit report. When a consumer applies for a new credit account, the credit granter most often depends on a report from the local credit bureau to make an intelligent decision about granting credit privileges to the consumer.

As a clearing house of consumer credit information, your credit bureau does not "rate" credit or determine who gets credit. That is the credit granter's individual decision based on his own internal standards. The credit bureau does *not* interview your friends, neighbors, or associates, and does *not* inquire into your social or personal life. The credit bureau is interested only in facts relating to your credit-worthiness.

* * * * *

Because of the central role played by credit bureaus in America's credit economy, Associated Credit Bureaus, Inc., the national trade association for the industry, has prepared this pamphlet for you. It is designed to provide guidance and to answer many of the questions you may have about credit and women.

1. What is the Equal Credit Opportunity Act?

The Equal Credit Opportunity Act (ECOA) is the federal law which, among other things, says that everyone has the right to apply for credit without fear of discrimination on the basis of sex or marital status. This means that you will be judged only on the basis of your "credit-worthiness." Your credit history at the credit bureau and your income are the two biggest factors which determine "credit-worthiness."

2. If I'm married and don't have my own credit history, will the ECOA help me get one?

Yes. One of the main purposes of the ECOA is to assist married women in establishing their own credit histories. Your credit history is essentially your bill-paying record. Historically, credit histories for both a husband and wife were found in a "joint" or combined file at the local credit bureau under the husband's name. Recognizing that the wife is entitled to the credit record of those accounts which she uses with her husband or on which she has signed a contract to pay, the new law requires credit granters to report the payment history of the account to credit bureaus in both names, not just the one that appears on the credit card or billing statement. The result of this change is that the local credit bureau is able to identify a credit history for any married woman based on those accounts she shares with her husband and on which both have signed a contract to pay. Sally Jones, whose credit history may have been listed with "John Jones (wife: Sally)" is now identifiable as Sally Jones or whatever legal name she chooses to use on her credit history.

3. Is my new credit history important?

Yes, it's very important. The credit history stored by your local credit bureau tells a credit granter about your ability and willingness to pay your bills and indicates your general ability to handle credit. Because a poor credit history can seriously restrict your ability to obtain credit, it is important to maintain a history of prompt payment on all accounts.

4. How will the credit granters determine which way to report the "shared or joint" accounts to the credit bureau?

On any of your active charge accounts opened before June 1, 1977, this opportunity to change the way in which it is reported to the credit bureau will be achieved through a form mailed to you by the credit granter. This form should be filled out completely and returned so each credit granter will know how to report your account to the credit bureau. You may not receive a designation form if the creditor's records already show the users or participants on an account. Applications for credit used after June 1, 1977, will contain questions which allow you to designate the names and manner in which your account will be reported to the credit bureau.

It is important to remember that arrangements for designating the way in which your account is reported to the credit bureau must be made with the credit granter.

5. ECOA helps me get a credit history, but can it include unfavorable past credit information?

Yes. The good and poor credit history on accounts you use with your husband or for which both are contractually liable may be included in your credit history. The law does provide, however, that if you can prove to a credit granter at the time of an application for credit that information from certain accounts does not reflect your personal ability or willingness to repay your personal obligations, the credit granter must disregard that unfavorable information.

6. Can I inspect my credit history to see if it is good, bad or not complete?

Yes. Contact your local credit bureau and make arrangements for a visit or telephone interview. After providing proper identification, you can review your history with a trained counselor, but a small fee may be charged. If you have been denied credit within the past thirty days because of information in a credit report, the Fair Credit Reporting Act requires the credit bureau to provide you with a free review of your credit history.

7. Can I correct inaccurate information in my credit history?

Yes. If you believe information in your credit history is not accurate, the credit bureau can investigate for you and try to resolve the dispute. If the credit bureau cannot solve the problem, you can file a brief statement of your side of the story in your credit history. That statement will be reported to all those who request credit reports on you in the future.

8. Does the credit bureau "rate" my credit history or decide if I get credit?

No. The credit bureau is only an information clearinghouse. The decision to grant credit is based on the individual, internal standards of each creditor and those standards can differ.

9. If I become divorced or widowed, will I lose my credit history?

No. If you have already had the charge accounts you used with your former husband reported to the credit bureau in your name, you will have a history that cannot be taken away. If you have failed to notify creditors that you used accounts with your husband before the divorce, you can go to the credit bureau and have the accounts included in your history. It may be necessary for the creditor to confirm you were a user of those accounts or liable with your husband for their repayment.

10. After a divorce, will I be able to get my own credit?

Yes. If you are credit-worthy in your own right. If you have a good credit history (including that from before the divorce) and necessary income, you should have no trouble getting credit.

11. Can my credit accounts be closed just because I have changed my marital status?

No. A creditor cannot close your account or change its terms unless you demonstrate an inability or unwillingness to pay. However, the creditor can require you to submit a new application if the original charge account was based on your former husband's income.

12. If I'm married, must the charge accounts I use with my husband be reported to the credit bureau in my married name?

No. You can request your accounts to be reported to the credit bureau in any legal name (i.e., your birth-given first name and either your birth-given surname, your husband's surname, or a combined surname). You should be consistent in the name in which all your charge accounts are reported to the bureau, so you will have a complete history in that name.

13. In a credit application can I be asked about my marital status, husband or former husband?

No. When you are applying for credit on the basis of your own credit-worthiness, you cannot be asked about your marital status, husband or former husband except under certain circumstances. You can be asked about your marital status and husband if you live in a community property state (see question 16). You can also be asked about your husband if he will be able to use your account, or if he will be partially or totally responsible for its payment. Finally, a potential credit granter can ask you to list any other accounts on which you are liable and the name in which those accounts are carried.

This final exception may tend to reveal your marital status. The spirit of the law, however, is that a credit granter can only ask you about your marital status, husband or former husband when that information clearly pertains to the use, payment or security of your account.

14. If I'm divorced and applying for credit, must I reveal any alimony or child support payments I receive?

No. You never have to reveal alimony or child support payments unless you want to have them considered as a part of your income. The credit granter then must count those payments as part of

KANSAS COMMISSION ON CIVIL RIGHTS
Special Committee on Commercial and Financial Institutions
July 27, 1977 at 10:15 a.m. in Room 510
Proposal No. 12

The Kansas Commission on Civil Rights is responsible for the administration of the Kansas Act Against Discrimination which was established to prevent and eliminate unlawful discriminatory practices in the areas of employment, public accommodations and housing based upon race, religion, color, sex, physical handicap, national origin or ancestry.

The Two (2) sections of the Act which provide the Commission staff with jurisdiction to process complaints against lending institutions are found in these sections:

PUBLIC ACCOMMODATIONS

K.S.A. 44-1009 (c)(1) states. . .It shall be an unlawful practice: (1) For any person, as defined herein, being the owner, operator, lessee, manager, agent or employee of any place of public accommodation to refuse, deny, or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this act because of race, religion, color, sex, physical handicap, national origin or ancestry, except where a distinction because of sex is necessary because of the intrinsic nature of such accommodation.

HOUSING

K.S.A. 44-1017. Same; unlawful acts as to real estate loans. It shall be unlawful for any bank, building and loan association, insurance company or other person, firm or enterprise, whose business consists in whole or in part in the making of real estate loans, to:

(a) Deny a loan or other financial assistance to a person applying therfor for the purpose of purchasing, constructing, improving, repairing or maintaining real property because of the race, religion, color, sex, national origin or ancestry of: (1) Such person; (2) any person associated with such person in connection with such loan or other financial assistance or associated with him in connection with the purposes of such loan or other financial assistance; or (3) the persent or prospective owners, lessees, tenants or occupants of the real property in relation to which such loan or other financial assistance is to be made or given;

(b) Discriminate against any person in the fixing of the amount, interest rate, duration or other terms or conditions of such loan or other financial assistance, because of the race, religion, color, sex, national origin, or ancestry of: (1) Such person; (2) any person associated with such person in connection with such loan or other financial assistance or associated with him in connection with the purpose of such loan or other financial assistance; or (3) the present or prospective owners, lessees, tenants or occupants of the real property in relation to which such loan or other financial assistance is to be made or given; or

Atch. J

(c) Use a form of application for financial assistance, or to make any inquiry, or make or keep any record in connection with any such application which indicates, directly or indirectly, an intention to make any preference, limitation, specification or discrimination because of race, religion, color, sex, national origin or ancestry.

The staff of the Commission, at the request of the Legislative Research Department researched the docket books of the agency and identified a total of thirty one (31) charges filed under our public accommodations and housing sections of the Act alleging unlawful practices by lending institutions. The basis for these charges are analyzed as follows:

Fifteen	(15)	or 48.4% were based upon racial discrimination.
Thirteen	(13)	or 41.9% were based upon sexual discrimination.
Two	(2)	or 6.5% were based upon religious discrimination.
One	(1)	or 3.2% was based upon ancestrial discrimination.
	31	

The Commission does not have the authority to process complaints against lending institutions based upon the charging parties marital status.

ADL:hc

Kansas Credit Union League

8410 WEST HIGHWAY 54
WICHITA, KANSAS 67209
PHONE (316) 722-4251

"K"

July 25, 1977

TO: MEMBERS OF THE INTERIM COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

FROM: Jim Holt, Assistant Vice President

SUBJECT: EQUAL CREDIT OPPORTUNITY (ECOA)

Here is a copy of our written effort in helping credit unions comply with the provisions of this act. You will notice that these are referred to as reference material and coded for filing reference. Each credit union has a set of this type of release which is kept for operational reference.

In addition to this material, we have had earlier this year regional meetings at which the criteria for compliance with ECOA were discussed. We also published and provided forms which are needed for compliance.

Hopefully this information will be of some use to you in your deliberation. We certainly endorse the concept of state enforcement of this law by the appropriate regulatory authority.

ASSOCIATION OF
KANSAS CREDIT UNIONS
AFFILIATED WITH CUNA, INC.
AND THE
WORLD COUNCIL OF CREDIT UNIONS

Atch. K

KANSAS CREDIT UNION LEAGUE

CREDIT UNION
OPERATIONAL INFORMATION

REFERENCE FILE NUMBER:
210.115

DATE: April, 1977 Rev.

TOPIC:

Equal Credit Opportunity Act as it affects credit unions based on the law and regulations effective March 23, 1977, as written by the Federal Reserve Board.

Marginal notes 202.1 and following refer to regulations of the ECOA known as Regulation B. The Act of Congress is 701 and following or is referred to as 1691 and following.

Please notify us of errors, omissions or improvements needed.

GENERAL STATEMENT

1691
701(a)
701(a)(1)

The Equal Credit Opportunity Act imposes certain requirements on credit unions. The intention of the act is to require creditors to grant or deny credit based on the facts about the credit applicant which actually reveal creditworthiness. The act intends to require creditors to avoid discrimination against any applicant with respect to any aspect of a credit transaction (for example, from discouraging an application by an applicant to collection procedures) based on race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to contract),

OR

701(a)(2)

because all or part of the applicant's income derives from any public assistance program,

OR

701(a)(3)

because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. (This consists of Trutn-in-Lending, Fair Credit Reporting, Fair Credit Billing, Garnishment law violations, etc.) Other criteria such as credit history, employment stability, income and debts should be the basis for judging creditworthiness.

701(b)(3)

Credit unions which have historically granted or denied credit by an unbiased and objective evaluation of Character, Capacity and Collateral should experience little difficulty in complying with the SPIRIT and INTENTIONS of the act, but they may have trouble with the technicalities of the law as to compliance procedures in defending themselves against suits because they may need to be able to prove:

202.2(p)
1691

that they have an "empirically derived" credit system that evaluates an applicant's creditworthiness primarily by allocating points or similar system to key characteristics describing the applicant (other than on prohibited bases),

AND

202.2(p)(2)
(iv)

which is periodically revalidated as to its predictive ability by the use of appropriate statistical principles and is adjusted as necessary to maintain its predictive ability. (See further explanation under "Definitions" below).

Certain procedural and form factors need to be recognized and implemented in order to avoid unintentional violations and in order to meet certain specific requirements. The major areas of concern are treated in this informational release. They include:

a. Definition of terms

b. A listing of new matters prohibited

c. Required changes in the loan application form

d. Statistical verifying and correcting scoring system used to deny credit

e. Notification of the action taken on the loan application and the reason for adverse action on credit

f. Retention of prohibited information

g. Method of furnishing credit information for both spouses

h. Preservation of records

i. Penalties

Your league has provided the last information release dated November, 1975, No. 210.105. The past release is effective through March 22, 1977, but on March 23, 1977, it is obsolete and should not be used as reference. This operational release is based on the new law and regulations and is definitive to such time as additional changes are made in the law or regulation. Your league is continuing to respond to the needs generated from this new law by preparing area workshops, revising forms and preparing additional information. Your thoughts, experiences and suggestions are welcomed.

Definitions

"Adverse action" when it occurs, as is explained herein, triggers the need for the creditor to:

1. Give notice of the action taken;

202.2(c)(1) 2. Give statement of reasons for denial; and

3. Record retention to the above.

"Adverse action"

(a) is the refusal to grant credit in substantially the amount
1691(d)(6) or on substantially the terms required by the applicant

UNLESS

202.2(c)(1)(i) the creditor offers credit other than as requested (see page 23 and Exhibit "H")

AND

202.2(c)(2)(i) the applicant uses or expressly accepts the credit offered.

(b) does mean"

1. Termination of an account, or

2. An unfavorable change in the terms of an account that does not affect all or a substantial portion of a non-discriminatory classification of the creditor's accounts, or

202.2(c)(1)(ii)

3. A refusal to increase the amount of credit available to an applicant when so requested by procedures established by the creditor for the type of credit involved.

202.2(c)(1)(iii)
202.2(c)(2)(iii)

The term "ADVERSE ACTION" does not include:

(A) Any change in terms expressly agreed to by the applicant or

(B) Any action of leniency relating to an account taken in connection with:

1. inactivity,

2. default, or

202.2(c)(2)(ii)

3. delinquency as to that account.

HOWEVER,

202.2(m) this does not mean that a creditor may discriminate in any collection procedures. This indicates that although collection procedures may be discriminatory they are not "adverse action" such as to trigger the action mentioned above. (See page 2.)

(C) A refusal to extend credit which would exceed a previously established credit limit on the account. Beginning March 23, 1977, the creditor is not required to advise the applicant of the credit limit in advance. Credit requested in excess of a previously established credit limit (even though the applicant has not been advised of the limit) would trigger the need for a further or new credit application and denial before adverse action would occur.

202.2(c)(2)(iii)
Commentary
p. 1242
F. R. 1-6-77

NOTE THIS ODDITY:

Commentary
p. 1242
F. R. 1-6-77

If an applicant requests a loan at an interest rate of 2 percent and is refused because the creditor's policy is to make loans only at 18 percent, THIS IS ADVERSE ACTION and triggers the first three actions first listed under the definition of "adverse action."

202.2(c)(2)(iv)

(D) Credit prohibited by law. Liquor may not be purchased on credit under the Kansas liquor law. (KSA 41-703)

202.2(c)(2)(v)

(E) A type of credit which the creditor does not offer (such as real estate loans) or a credit plan not offered by the creditor (such as credit cards).

In paragraph Second of F. R. commentaries on page 1243 it states:

Commentaries
F. R. 1-6-77
page 1243

"...a creditor, as a matter of business judgment... (may) set the acceptance score or standards (on credit applications) high or low depending upon its business objectives."

Credit committees or loan officers may want minutes on standards from time to time as they change policies in this area. Perhaps a "memo to file" or an inter-office memo to and from the manager and/or loan officers will be needed to document policy for assistance in defense of charges of discrimination as loan policies do change.

1691a(b)
202.2(e)

"Applicant" means a person who applies for credit or an amount exceeding a previously established credit limit and anyone who has received credit. The term also includes any person who is or may be contractually liable, but does not include user. The term does not include a guarantor, surety, endorser or similar party.

202.2(f)

"Application" means an oral or written application for credit made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of credit under a previously established credit limit.

202.2(f)

"Completed application for credit" means all information the creditor usually obtains and uses to evaluate credit for the amount and type of credit requested and, in addition, a creditor must (1) use reasonable care in obtaining such information, (2) request information which the applicant can complete, (3) notify the applicant of that fact and (4) allow a reasonable chance to complete the application. See exhibit for form, "Notice of Incomplete Application." (Exhibit "E")

202.2(i)

"Contractually liable" means expressly obligated to repay all debts arising on an account by reason of having <u>signed</u> an <u>agreement</u> to that effect.

202.2(m)
202.4

"Credit transaction" means:

1. Information requirements
2. Investigation procedures
3. Standards of creditworthiness
4. Terms of credit

5. Furnishing of credit information

6. Revocation

7. Alteration or termination of credit

AND

8. Collection procedures

202.2(m) and any unnamed aspect of the applicant's dealings with a creditor.

202.2(n) "Discriminate against an applicant" means to treat one applicant or prospective applicant less favorably than others.

202.2(o); SEE Commentaries p. 1243 of F. R. 1-6-77 "Elderly" means 62 or older. This age is chosen since that is the earliest age at which retirement benefits are paid by the Social Security Administration.

202.2(p) "Empirically derived credit system." (See, "Standards for Tests of Soundness of Credit Granting and Denial," below.) p. 15.

202.2(q) "Extension of credit" and "extend credit" mean the granting of credit in any form and includes, but is not limited to:

1. Credit granted in addition to any existing credit or credit limit,

2. Credit granted pursuant to an open end credit plan,

3. The refinancing or renewal of any credit,

4. Consolidation of two or more obligations,

5. The continuance, without any special effort to collect before maturity, of any existing credit,

(6, 7 and 8 following are applicable to credit cards only)

6. Credit granted in the form of a credit card, whether or not the card has been used,

7. The issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card, and

8. The continuing in force of a previously issued credit card.

202.2(u) "Marital status" means the state of being unmarried, married or separated, as defined by applicable State law. The term "unmarried" also includes a person who is divorced or widowed.

202.2(z) footnote 3

"Prohibited basis" means a creditor may not discriminate against persons because of their social or business relationships with people who are protected by this Act.

202.6(b)(2)(iii) footnote 9

"Public assistance program" means any governmental assistance program that provides a continuing, periodic income supplement, whether or not it is based on entitlement or need.

202.2(a)

"Use" of an account applies only to open end credit.

THE DON'TS OF LENDING

General

1691(a) 202.4

It shall be unlawful for any creditor to discriminate against any applicant on any basis prohibited as listed on the 1st page with respect to any aspect of a credit transaction.

Discourage

202.5(a)

A creditor shall not make any statements written or by word of mouth to applicants or prospective applicants which would, on any prohibited basis discourage a reasonable person from applying for credit or pursuing an application for credit.

Separate Accounts

1691d 202.7(a)

A creditor shall not refuse, on any prohibited basis to grant a separate account to a creditworthy applicant.

Marital Status Inquiries

1691d(d)

A creditor shall not ask the applicant's marital status if the applicant applies for an unsecured separate account unless the marital status would affect the interest rate charges or loan ceilings as explained in Exhibit "D."

Name Choice

202.7(b) 202.5(c)(3)

A creditor shall not prohibit an applicant from opening or continuing an account in (1) a birth-given first name and a surname that is the applicant's birth-given surname, (2) the spouse's surname or (3) a combined surname. The former Regulation B implied that the person could use broader choice of words for a name. An alias cannot now be used, it would have to be related to the criteria stated above.

Surname is the last name or family name. It is our guess that the regulation "combined surname" means last name by birth and last name acquired by marriage. HOWEVER, a creditor may ask the name used in
202.5(c)(3) any account listed in the credit application and on which the applicant is liable. Examples: A woman might have used Mrs. Jane Smith, Mrs. John Smith or Mrs. Jane Jones-Smith or other variations. (Also see top of page 12 regarding inquiry on other names.)

Discounting Income In Evaluating Credit of Spouse

A creditor shall not discount the income of an applicant or an
202.6(b)(5) applicant's spouse on any prohibited basis in any method of credit scoring or evaluating applications.

Part-time Employment Evaluation

A creditor shall not discount income solely because it is derived
202.6(b)(5) from part-time employment,

BUT

the creditor may consider the amount and probable continuity of such
202.6(b)(5) income in evaluating the creditworthiness of an applicant.

Telephone Listing or Its Existence

A creditor shall not take into account the existence of a telephone
202.6(b)(4) listing in an applicant's name in evaluating credit, HOWEVER, a creditor may take into account the existence of a telephone in the applicant's home.

Childbearing

A creditor shall not request information about birth control
202.5(d)(4) practices or childbearing or rearing intentions or capability to bear children.

Neither shall a creditor aggregate statistics or assumptions
202.6(b)(3) relating to any group of persons possibility of bearing or rearing children, OR FOR THAT REASON, consider diminished or interrupted income in the future because of possible childbearing or rearing likelihood.

Co-makers and Guarantors

A creditor shall not require a spouse to be "contractually liable"
202.7(d)(1) unless similar requirements of co-makers, guarantors, etc., are also required of other borrowers without regard to sex or marital status.

SPECIAL NOTE: A spouse may desire to be a co-maker or guarantor in order to establish credit history or credit record. This can be achieved by the spouse becoming "contractually liable" and by directing the credit union to report credit information on the account in the name designated by the spouse. See Exhibit "C" for more information on this procedure.

Unsecured Loans

202.7(d)(2) & (3) 202.7(d)(4) A creditor shall not require a security agreement (mortgages, etc.) unless a similar requirement for security is also required of other applicants without regard to sex or marital status.

Change in Marital Status

A creditor shall not take any of the following actions with respect to a person who is "contractually liable" on an existing open end account on the basis of a change of name or marital status or on the basis of an applicant reaching a certain age or retiring:

1. Require a reapplication;

202.7(c)(1)

2. Require a change in the terms of the account; or

3. Terminate the account.

202.7(c)(2) HOWEVER, where the credit granted on an open end account was based on the other spouse's income and by the change of marital status the applicant would not qualify for the credit based on the information on the original application for open end credit, the creditor may require a reapplication for credit based on the change in the marital status.

APPLICATION REQUIREMENTS AND PROHIBITIONS

Use Of Courtesy Titles

202.5(d)(3) 202.5(e)(3) The credit union may add a place for asking for courtesy title, such as Ms., Mr., Miss or Mrs. if the form appropriately discloses that the giving of such title is optional. The form shall otherwise be neutral as to sex. Your league forms do not show these courtesy titles.

Information About a Spouse or Former Spouse

202.5(c) A creditor may not request any information concerning an applicant's spouse or former spouse except as explained below.

202.5(c)(2) A creditor may request and consider any information concerning an applicant's spouse which may be considered about the applicant only if:

1. 202.5(c)(2)(i) The spouse will be permitted to use the account (credit unions do not have "user" accounts); or

2. 202.5(c)(2)(ii) The spouse will be contractually liable upon the account (see definition of "contractually liable" under definition on page 4 and Exhibit "C"); or

3. 202.5(c)(2)(iii) & 202.7(d)(5) footnote 10 The applicant is relying on the spouse's income as a basis for repayment of the credit requested; or

4. 202.5(c)(2)(v) A creditor may also request and consider any information concerning an applicant's former spouse if the applicant is relying on alimony, child support or separate maintenance payments from such a spouse or former spouse for repayment of the credit requested. (See Exhibit "F")

202.5(d) footnote 5 A creditor may request and consider any information concerning the probable continuity of the applicant's ability to pay if such information is requested and considered without regard to sex or marital status.

Permissible Inquiries As To Marital Obligations On Alimony, Child Support Or Separate Maintenance

Paying

202.5(d) footnote 5 Notwithstanding any prohibition as to inquiries as to marital status, a creditor may inquire as to the liability of an applicant to pay alimony, child support or separate maintenance. (See Exhibit "G" as to form and nature of questions which help evaluate this liability.)

Receiving

202.5(d)(2) 202.5(c)(2)(v) 202.5(e)(3) If the creditor first discloses to the applicant that the income from alimony, child support or separate maintenance payments need not be revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness, a creditor may then inquire whether any income stated in the application is from alimony, child support or separate maintenance payments.

202.6(b)(5) Where the applicant relies on alimony, child support or separate maintenance payments a creditor must consider such payments as income to the extent such payments are consistently made. This relates to probable continuity of applicant's ability to pay.

Factors which a creditor may consider in determining the likelihood of consistent payments include, but are not limited to:

1. Whether payments are received pursuant to a written agreement or court decree;

202.6(b)(5)

2. The length of time the payments have been received;

3. The regularity of receipt;

4. The availability of procedures to compel payment; and

5. The creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Fair Credit Reporting Act or other applicable laws. (See Exhibit "F" for sample questionnaire.)

Spouses' Signatures May Be Required, When

202.7(d)(2) & (4)

The creditor may require the signature of an applicant's spouse on security agreements as are necessary under the law of the State to create a valid lien, pass clear title, waive inchoate* rights to property or to assign earnings. This may be required if the creditor reasonably believes that the spouse's signature is necessary.

Non-spouses

202.7(d)(5) footnote 10

HOWEVER, if an applicant requests individual credit relying on the separate income of another person, a creditor may require the signature of the other person to make the income available to pay the debt, such as signing the loan application and/or the promise to pay.

202.7(d)(5)

A CREDITOR MAY NOT OTHERWISE REQUIRE THE SIGNATURE OF A SPOUSE ON A CREDIT PAPER unless such a requirement is imposed without regard to sex OR marital status on all similarly qualified applicants for similar types and amounts of credit.

STATE PROPERTY LAWS

202.6(c)

State property laws directly or indirectly affecting creditworthiness as partially explained above shall not consitute discrimination in the evaluation of credit applications.

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* "Inchoate" means, in general, the rights given to a spouse in property of the other or of both of them by State law which cannot be waived except in writing signed by both married partners. This would mean any real estate and, generally, all household goods and family means of travel and similar family property.

Duties Of Creditor In The Furnishing Of Credit Information

202.10(a)

Accounts Established Prior to June 1, 1977

202.10(b)(1) For all accounts established prior to and in existence on June 1, 1977, the creditor shall:

202.10(b)(2) Mail or deliver to all applicants, or all married applicants, in whose name an account is carried on the creditor's records, the one copy of the notice attached to this paper and marked Exhibit "A." The notice may be included with other mailings. All such notices must be mailed not later than June 1, 1977. With respect to open end accounts, this requirement is met by mailing one notice to all accounts for which any statement is sent between June 1, 1977, and October 1, 1977.

A creditor may add additional information as necessary to identify the account.

202.10(a)(3) If a creditor furnishes credit information concerning an account designated under the instructions of this law or designated prior to this law in response to an inquiry regarding a particular applicant, it shall furnish the information in the name of the spouse about whom such information is requested,

AND

202.10(a)(2) the creditor shall furnish such information to a consumer reporting agency in a manner that will enable the agency to access the information in the name of each spouse.

202.10(b)(2) If the creditor designates all accounts from and after June 1, 1977, to reflect the participation of both spouses it need not mail or deliver the notice shown as Exhibit "A" AND the creditor need only send notices to those it lacks the information necessary to make the proper designation regarding participation or contractual liability.

A creditor may mail the notice to those accounts for which it lacks necessary information and designate automatically those for which it does possess the information.

202.10(b)(1)(i) Spouses of guarantors, sureties, endorsers or similar parties need not be considered.

New Parties on Account--Reporting

202.10(a)(3) footnote 12 SEE Commentary from F. R. 1-6-77 If a creditor learns that new parties have undertaken payment on an account, then the subsequent history of the account shall be furnished in the names of the new parties. This could occur where one primarily liable defaults and payments are made by a guarantor, endorser, sureties or similar parties. The same situation often occurs when real estate is sold and the new buyer assume the mortgage on the

real estate and the new buyer makes the payments. This does not prohibit continuing to give the credit history on such accounts on the original or primary obligor.

NOTICE
Credit History for Married Persons

See Commentary 2nd unnumbered para. p. 1250 F. R., 1-6-77

The new form permits the credit union to refuse to accept the form as adequate if (1) it is not signed by one of the parties, (2) the name of the signer is not also printed or typed on the form, and (3) the account number identifying the account is not given.

202.10(c)
202.10(a)(1) (i) & (ii) footnotes 11, 13, 14 & 15; Commentary p. 1250, 5th unnumbered para., left column, F. R. 1-6-77

The regulation clearly states the signature of an applicant or the applicant's spouse on the request to change the manner in which the account is reported does not alter the legal liability of either spouse upon the account.

If the account is not an open end account and the other spouse is not "contractually liable," then the credit union does not need to report the credit history in the name of the non-user and the spouse is not liable on the loan. The refusal to report the credit history of a spouse in accordance with NOTICE instructions is not a violation where the spouse is not liable on the account and where the spouse is not a "user" of the account.

Requests to Change Names and Manner in Which Information Is Reported

202.10(c)

The creditor must designate the account to reflect the participation of both spouses within NINETY (90) days after receipt of a properly completed request to change the manner of reporting information to consumer reporting agencies and others.

Commentary p. 1250 F. R., 1-6-77

The word "completed" underlined above means according to the official commentaries on the regulation was added "...to make it clear to consumers that all information requested in the notice [(1) typed or printed name, (2) signature, and (3) account number] must be supplied before any change in credit information reporting will be made." Some people are reputed to write in such a manner that even they cannot read their own handwriting. Certainly, the creditor must be able to identify the name and account.

A Creditor May Ask "Have You Used a Name Other Than the Name Shown in This Application?" and Not Violate Regulation B

F. R. 12-17-76 p. 55174; 202.5(c)(3)

While it could be argued that such an inquiry is an indirect question as to marital status, the Federal Reserve Board has stated that to forbid such a question would deny creditors access to information necessary to evaluate an applicant's creditworthiness. Such an inquiry is permissible.

Inadvertent Errors

202.10(d) Failure to comply with designation and reporting requirements as explained above shall not constitute a violation of the law if caused by inadvertent error, if on discovering the error, the creditor corrects the error as soon as possible and commences compliance with this provision.

AGE AS A PROHIBITED BASIS FOR DISCRIMINATION

Minors

KSA 38-102
202.2(z)
1691(a) A credit union may refuse to loan to a minor if the minor does not have the capacity to contract. Persons under the age of 18 years in Kansas may disaffirm any contract within a reasonable time after attaining the age of 18. Because of this provision, a credit union could refuse to loan to a minor. However, this may not be absolutely safe. If the minor is borrowing for necessaries, the minor is bound by his/her contract. If the minor is fully supported by his/her parents, there is serious doubt as to whether or not borrowing by the minor is for "necessaries."

As explained in release 604.500 dated July, 1972, a minor who disaffirms a contract must still return the property obtained by the contract. If money is borrowed the minor must return the money, but if the money was not borrowed for "necessaries" the minor may avoid paying for the use of the money (interest).

"Necessaries." The Supreme Court of Kansas in a decision made in 1963 defined what are "necessaries" as that term might be applied in the regulations. The Kansas Supreme Court said:

> "We think it unnecessary to go into a full discussion as to what constitutes 'necessaries'...Generally, it may be said necessaries include those things needed and suitable to the rank and condition of the spouses and the style of life they have adopted. What necessaries are in kind and amount is to be determined in each case by the means, ability, social position and circumstances of both husband and wife." *Chipp v. Murray*, 191 Kan. 73, p. 76.

Age Other Than "Elderly" or "Minor"

Age may be considered for the purpose of the occupation and the length of time to retirement to determine whether or not the applicant's income will support the credit until its maturity. Or the credit union

202.6(b)(2) (iii) footnote 9 2nd unnumbered para.

may consider the adequacy of the security offered if the duration of the credit extension will exceed the life expectancy of the applicant. The credit union could consider terms requiring high enough payments or a large enough down payment so that the property to be purchased could be reasonably paid off within the life expectancy of the applicant. Life insurance expectancy tables and I. R. S. life expectancy tables would be reasonable for use in this type of evaluation. (See Exhibit "J" from I. R. S.)

Age-Insurance

202.7(e)

A credit union shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, or disability insurance is not available on the basis of the applicant's age.

ALSO NOTE: Insurance applications may ask:

1. age,
2. sex, or
3. marital status.

202.7(e) last sentence

So if a credit union is writing insurance such as disability, credit life, health, or accident, those three otherwise prohibited questions may be asked, but to be applied only for the purpose of writing insurance enumerated.

AGE

as a factor in evaluating creditworthiness is prohibited

EXCEPT

202.6(b)(2) (ii)

1. In a demonstrably and statistically sound, empirically derived credit system*, a creditor may use an applicant's age as a predictive variable,

   HOWEVER,

   the age of an elderly applicant may not be assigned a lower factor or value.

202.6(b)(2) (iii)

2. In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age only for the purpose of determining a pertinent element of creditworthiness.

---

* See discussion below, "Standards for Tests of Soundness of Credit Granting and Denial." p. 15.

202.6(b)(2)(iv)

3. In any system of evaluating credit, a creditor may use the age of an elderly applicant as a means to give more favorable treatment to an elderly person.

STANDARDS FOR TESTS OF SOUNDNESS OF CREDIT GRANTING AND DENIAL

"Empirically derived credit system" is a credit scoring system that evaluates an applicant's creditworthiness primarily by allocating points (or similar method of weighing credit) to key factors assigned to the applicant and other aspects of the transaction (other than on prohibited bases). In such a system each item given weight must be:

202.2(p)(1)(i) & (ii)

1. Derived from a scientific comparison of sample groups or the members of a creditworthy and non-creditworthy applicants to a credit union who applied for credit within a reasonably recent period of time, and

2. Determined, along or with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

A demonstrably and statistically sound, empirically derived credit system is one:

202.2(p)(2)(i)

1. In which data in the system are obtained from the applicant's file by using appropriate sampling principles,

UNLESS

the credit union uses the complete population of all applicants, and

202.2(p)(2)(ii)

2. Which is worked out by the credit union for the purpose of predicting the creditworthiness with respect to the (legitimate?) business interests of the credit union, including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment, and

202.2(p)(2)(iii)

3. Which can be proven on statistical principles to be reliable in separating creditworthy and non-creditworthy applicants, and

202.2(p)(2)(iv)

4. Which is periodically checked as to its predictive reliability by records and statistics and is adjusted to maintain its predictive ability.

202.2(p)(3) A creditor may borrow a system to meet the above standards if the creditor does not have such a system as described above,

HOWEVER,

any borrowed system must meet the standards described above and the borrowed system must be checked by the creditor using the borrowed system when it gains sufficient credit experience to do so. If the system does not show by experience to be sound, it must be corrected or it will be declared to not meet the standards of the regulation.

In granting or denying credit a credit union shall not discriminate against any applicant on a prohibited basis. "Prohibited basis" is explained in the very first paragraph of this paper.

Judgmental System

There are three (3) definitions which bear directly on standards of creditworthiness. They are:

202.2(p)(2)(iii) 202.2(t)

1. "Judgmental system" is defined as any system which cannot be proven scientifically or demonstrated as being statistically sound in separating creditworthy and non-creditworthy applicants at a scientifically or statistically significant rate.

202.2(y)

2. In a "judgmental system" a denial of credit for the purposes of asserting non-discrimination should be based on a "Pertinent element of creditworthiness." This is defined as any information used to evaluate applicants that the creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness. This ties into the definition of a completed application for credit. This is defined as an application which contains all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested.

202.2(f)

3. "Empirically derived credit system" is defined further as, "A demonstrably and statistically sound, empirically derived credit system." See p. 15 above.

202.9(b)(2) In either a "judgmental system" or an "empirically derived credit system" a creditor may not state in its STATEMENT OF SPECIFIC REASONS FOR CREDIT DENIAL that the adverse action was based on the creditor's internal standards or policies OR that the applicant failed to achieve the qualifying score on the creditor's credit scoring system. Such a statement is insufficient.

F. R. 1-6-77 "Empirically derived credit system" is discussed in the regulations on page 1243 preceding the actual regulation. This discussion, which we refer to herein sometimes as "commentaries," has strong interpretative value. Paragraph Third states that the predictive value must be tested and shown to be reliable during the development process of the

system and after using any system must be retested for its predictive value. This commentary paragraph concludes with this statement:

Commentaries
F. R. 1-6-77
p. 1243
para. Third
last sentence

> "No particular confidence level is specified in the regulation; however, system developers may note that courts in employment cases have shown a preference for a 95 percent level."

1691(a)
701(a), p. 20
202.4, p. 8

A creditor shall not discriminate against any applicant on a prohibited basis regarding any aspect of a credit transaction.

202.6

A creditor may consider any information that the creditor obtains in order to evaluate an application so long as the information is not used to discriminate against an applicant on a prohibited basis.

Footnote 7 of Section 202.6 of the regulation states:

p. 10

> "The legislative history of the Act indicates that the Congress intended an 'effects test' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs v. Duke Power Co.**... and *Albemarle Paper Co. v. Moody***...to be applicable to a creditor's determination of creditworthiness."

In the Griggs case on employment the court said (we change employment language to credit, creditworthiness, etc.):

> "Nothing in the Act precludes the use of testing or measuring procedures; obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of ~~job performance~~ *creditworthiness*...What Congress has commanded is that any tests used must measure the person for the ~~job~~ *credit* and not the person in the abstract."

In the Albemarle Paper Company case the court said:

(1975)

> "This burden arises...only after the complaining party...has made out a prima facie case of discrimination--has shown that the tests in question select applicants for ~~hire or promotion~~ *creditworthiness*, it remains open to the complaining party to show that other tests or selection devices, without a similarly undesirable racial effect, would

---

* *Griggs v. Duke Power Company*, 401 U.S. 424, 91 S.Ct. 849 (1971), 28 L.Ed. 2d 158 (1971).

** *Albemarle Paper Company v. Moody*, 422 U.S. 425, 95 S.Ct. 2362 (1975), 45 L. Ed. 2d 280 (1975).

> also serve the ~~employer's~~ *creditor's* legitimate interest in '~~efficient and trustworthy workmanship~~' *creditworthiness*...Such a showing would be evidence that the ~~employer~~ *creditor* was using its tests merely as a 'pretext' for discrimination...we are concerned only with the question whether Albemarle has shown its tests to be ~~job~~ *credit* related...'unless they are demonstrably a reasonable measure of ~~job performance~~ *creditworthiness*...What Congress has commanded is that any tests used must measure the person for the ~~job~~ *credit* and not the person in the abstract' ..."

In this case the court said:

> "...The company made no attempt to validate the test for ~~job related~~ *creditworthiness*..."

Mr. Justice Blackmun said in the last sentences of his concurring opinion:

> "I fear that a too rigid application of the ~~EEOC~~ *ECOA* Guidelines will leave the ~~employer~~ *creditor* little choice, save an impossibly expensive and complex validation study, but to engage in a subjective quota system of ~~employment~~ *credit* selection. This, of course, is far from the intent of Title VII."

The above language seems to be repeated in much the same words in the regulations of the Equal Credit Opportunity Act.

What Criteria or Reasons Are Acceptable for a Denial of Credit or as Principal Reasons for Adverse Action Concerning Credit in View of the Above Standards?

The form given in Regulation B (See Exhibit "B") seems to indicate reasons which, if used in a non-discriminatory fashion, would be acceptable if these reasons are regularly used and considered as principal reasons for denial of credit and evaluating applications for amount and type of credit requested.

In the definitions (202.2) and in the rules concerning evaluation of applications (202.6) references are made to two (2) principal methods of evaluating creditworthiness. These are: (1) a judgmental system and (2) a demonstrably and statistically sound, empirically derived credit system.

Justice Blackmun, in his concurring opinion in the last sentences of the Albemarle case, seems to sum up our feeling about the second method. The Judge says:

> "...the...Guidelines will leave the employer (in our use the *creditor*) little choice, save an impossibly expensive and complex validation study, but to engage in a subjective quota system of employment (here *credit*) selection. This, of course, is far from the intent of..." the law.

In the Albemarle case it seems clear from the court opinion that no sincere effort was made to give tests properly related to employment or the ability to do the job. Also, later validation tests were indifferently done. How far a scoring system and validation tests must go to satisfy the courts is open to question and will take extensive litigation to clarify.

ACTION THAT MAY BE REQUIRED WITH AN INCOMPLETE APPLICATION

A "Completed Application" is one which all information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral).

Where the application is incomplete the creditor may not take adverse action because the application is incomplete until:

1. The creditor has exercised reasonable diligence in obtaining such information, and

2. Where the applicant can complete the application the creditor must:

202.2(f)

   a. make reasonable effort to notify the applicant of the incompleteness, and

   b. shall allow the applicant a reasonable opportunity to complete the application.

A creditor must develop standard forms for notifying the applicant of the incompleteness and be able to show that such a notice of incompleteness was given showing the nature of the incompleteness,

AND

in the notice indicates a time in which the applicant must furnish the information to complete the application (which must be reasonable under the circumstances). "Notice of Incomplete Application," (Exhibit "E") is suggested here.

202.2(f) If the applicant does not act in a reasonable time to complete the application then the "Statement of Credit Denial, Termination, or Change" form (Exhibit "B") should be given to the applicant showing the reason as being for incompleteness of application.

202.2(c)(2)(ii) HOWEVER, the regulation indicates that, "Any action or forbearance relating to an account (as contrasted to the term 'application') taken in connection with inactivity, default, or delinquency as to that account..." does not constitute "Adverse Action" which would require the notice shown as Exhibit "B."

Withdrawn Applications

202.9(d) Where an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within thirty (30) days after applying, then the creditor may treat the application as withdrawn and need not give notice of the action taken.

Immigration Status and Permanent Residence

202.5(d)(5) A creditor may inquire as to an applicant's permanent residence and immigration status. This would be reasonable in cases of persons in the military service who are often subject to rotation and the creditor needs to know where they can be contacted.

Old Forms May Be Used--When

202.5(e) footnote 6 If the creditor's old forms comply with the October 28, 1975, version of the Equal Credit Opportunity Act, the creditor may use these forms in its present stock until they are exhausted or until March 23, 1978, whichever occurs first.

Oral Notifications of Adverse Action--Small Creditors Who Have No More Than 150 Applications in Preceding Calendar Year

202.9(c) If a creditor has no more than 150 applications (this would include oral applications) in the preceding calendar year, then the creditor does not need to give a written statement of adverse action on an application or the specific reasons for denial in writing. Both such notices may be given orally or verbally and need not be in writing;

BUT,

202.9(a)(2) 202.9(b) the oral notices must be substantially similar to the forms as prescribed in the regulations.

CREDITOR

Liability for Damages

706(a)
1691e(a)

Any creditor who fails to comply with any requirement of Regulation B or the law known as the Equal Credit Opportunity Act may be sued by an applicant for any actual damages which the applicant suffers when the applicant sues as an individual or as a member of a class.

Further, any creditor shall be liable for punishment (punitive damages for not more than $10,000 in addition to the damages stated above,

EXCEPT

IN THE CASE OF A CLASS ACTION the total recovery shall not exceed the lesser of $500,000 or 1 per centum of the net worth of the creditor.

ALSO,

1691e(b)

THE LAW INSTRUCTS the court to consider, among other relevant facts:

1. The amount of actual damages awarded, (if the actual damages are great, then the punishment damages would be greater),
2. The frequency and persistence of failures of compliance by the creditor,
3. The resources of the creditor,
4. The number of persons adversely affected, and
5. The extent to which the creditor's failure was intentional.

(c)

The creditor may be sued in state or federal court.

ATTORNEY'S FEES and COURT COSTS

(d)

may be awarded as determined by the court and added to the punishment of the creditor.

The Applicant must Sue within TWO YEARS

(f)

UNLESS the Government has already started, then the applicant has one more year to sue.

NOTHING IN THIS LAW will PROHIBIT the Applicant

(j)

in a court or governmental agency proceeding from discovering the creditor's procedures for granting credit (under appropriate discovery procedures of the court or agency).

INFORMATION FOR MONITORING PURPOSES RESIDENTIAL LOANS ONLY

202.13 1691f

There is a special requirement for those credit unions that have procedures established for receipt of written applications for loans to purchase residential real property. As noted previously, the general rules prohibit gathering certain information about loan applicants. But under the monitoring provisions, creditors who receive applications for first mortgage loans must request certain information.

The information may be obtained either on the written application form or on a separate form that refers to the application. A disclosure to the applicant and joint applicant (if any) must be included that states that the information is being requested by the federal government for the purpose of monitoring compliance. The applicant and joint applicant have a choice of whether or not to furnish the requested information. If they choose not to provide the information, that fact must be noted on the form.

The information to be requested is the following:

1. race/national origin using the categories specified in 202.13(a)(1)(i);
2. sex;
3. marital status using the categories married; unmarried; separated; and
4. age.

202.13(d)

ECOA specifies that the administrative enforcement agencies including the NCUA or the FTC could substitute a different monitoring program for that described above. (See p. 35 of your league release 210.104 for form.)

KEEPING RECORDS

202.12(a)

A credit union does not have to be concerned about having information prohibited by ECOA in its files if it pertains to sex or marital status and was obtained from any source before June 30, 1976; the same is true for information related to the other prohibited bases obtained prior to March 23, 1977. The date that prohibited information was received is irrelevant (and the information may be kept, but not used) if it came either from a consumer reporting agency or from anyone else without the specific request of the credit union.

202.12(b)

There is a 25 month record keeping requirement under ECOA. The period generally commences at the time of notice of action taken. Copies of loan applications, information used in evaluating the application, the

notification paper (or notation, if the notification was verbal), and any written or recorded information related to the adverse action should be kept. Special record keeping requirements are triggered when a credit union knows that an official ECOA investigation, administrative proceeding or litigation is pending.

NOTIFICATION OF ACTION TAKEN ON ALL LOAN APPLICATIONS REQUIRED

(See Exhibit "B")

202.9(a)(1) Action of approval is implied and complies with the law where the applicant receives the loan.

The following is the timetable for notification stated in the regulation:

30 days -- after receiving completed application

202.9(a)(1) 30 days -- after adverse action on existing account (See Exhibits "B" and "I")

30 days -- after adverse action on uncompleted application (See Exhibit "E")

90 days -- after creditor makes different offer and not accepted (See Exhibit "H")

Content of Notification

1. Statement of specific reasons (See Exhibit "B")

202.9(a)(2) 2. Statement of reasons within 30 days upon request (See Exhibit "I")

3. ECOA notice (See bottom of Exhibits "B" and "I" and check appropriate box)

4. Fair credit reporting (See Exhibits "B" and "I")

Special rule -- 150 loan applications -- verbal (See explanation on page 20.)

COUNTER-OFFER OR OFFER TO GRANT CREDIT DIFFERENT THAN REQUESTED BY THE APPLICANT

202.2(c)(1)(i) 202.9(a)(1)(iv) Where a different offer is made by the creditor to grant credit than as requested by the applicant Regulation B contemplates a longer time within which to notify the applicant of the action taken. For this reason, the creditor may desire to notify the applicant in writing so that a record is made of this offer to show that the law was complied with. Exhibit "H" may be of some help in doing this.

APPLICATION FORMS

Model Application Forms

The Regulation B contains model application forms. The forms contained in the Appendix B are models; their use by creditors is optional.

SEE p. 5679 F.R. 1-31-77

There are five (5) forms shown. The last form is a Residential Loan Application form which we recommend since the regulation and law require certain things which this form fulfills.

The next to the last form is designed for use in Community Property States. We have ignored this since Kansas does not have a community property law.

The first three forms we have combined into one loan application form. In so doing we have:

1. Eliminated in the titles of the three forms the terms: (Open end, unsecured credit), (Closed end, secured credit), and (Closed end, unsecured/secured credit).

2. In all three forms which we have combined there are three (3) boxes for checking and an explanation for each box. In the single form we have combined the language so that the boxes and instructions relating to them direct the applicant to indicate whether or not the credit is sought as a single applicant or a joint applicant, secured or unsecured, and have left no indication as to the loan advance being "open end" or "closed end" as we believe these terms have little or no meaning to borrowers or applicants. ECOA does not control "open end" or "closed end".

3. Since the instructions direct applicants to boxes "A", "B", "C", "D" and "E" we have assisted applicants by placing a large letter in the margin to more easily locate such boxes.

4. The second box in the first form ends with the words "or user." We have left those words out because credit unions do not have user accounts. Only those members who are "contractually liable" may borrow.

5. Above Section A we have altered the words as they appear in the second and third form which read: "Amount Requested $_____, Payment Date Desired _____, Proceeds of Credit To be Used For _____", by adding and substituting words to make this portion of the form to read: "Amount Requested $_____, Amount of Payment Desired $_____, Date of First Payment Desired _____, _____, Frequency of Payment Weekly, Monthly, etc._____, (Purpose) Proceeds of credit to be used for _____".

6. Where the so called open end application in Section A stated: "Is any income listed in this Section likely to be reduced in the next two

years" and inserted instead "before credit requested is paid off." This latter language is in both of the so-called closed end application forms.

7. In both Sections A and B where the question is: "Name of nearest relative not living with you _____" we have used the language "Names of two nearest relatives not living with you _____" and made two lines for the answer instead of one.

8. In the next to the last line of Section D the question is: "Have you been declared bankrupt in the last 14 years?" which we have changed by leaving off the words "in the last 14 years?" The 14 years rule arises out of the Fair Credit Reporting Act which in Section 605 of the act (15 U.S.C. Sec. 1681c) says that "... no consumer reporting agency may..." make a consumer report on a bankruptcy over 14 years old. Credit unions are not consumer reporting agencies. We know of no prohibition against asking the question as we have written it. We doubt if it would be proper for a credit union to report on any bankruptcy which its records show to have been over 14 years old.

(see definition of "consumer reporting agency")
15 U.S.C. Sec. 1681a(f).

9. We have modified Section E by leaving out the following words at the bottom of the section: "If the security is real estate, give the full name of your spouse (if any): _____". We have done this because of the monitoring provisions of the law required in a "Residential Loan Application". It was our thought that since Section E already deals with secured credit that this would take care of any description or other proper questions desired in real estate as well as certain non-real estate secured loans where the signature of the spouse would be necessary. To leave the reference to real estate in the form might cause an incautious employee to use this form instead of the required forms and procedures for residential real estate loans. On non-residential real estate loans the monitoring provisions would not apply and the credit union employee could still have occasion to ask the proper information in the blank to describe the security.

10. At the bottom is added also the blanks and information for the credit committee or loan officer to fill in indicating the action taken by the appropriate employee or officer of the credit union.

APPLICATION FORM --- TOO LONG

CRITICISM

Regarding the application form which is a combination of three equally long application forms we advise that the entire form need not be used. Each of the three government forms is as long as our combined government form.

As Much Of The Application May Be Filled Out As May Be Desired

keeping in mind that only the information need be filled out as "... the
202.2(f) creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested...."

OPTIONAL USE OF FORMS

Keep in mind that the Appendix B comments introducing these forms state: "The forms contained in this Appendix are models; their use by creditors is optional...."

The regulation states that a creditor may change the form:

202.5(e) (1) by asking for additional information not prohibited
202.5(d)(3) (2) by deleting any information requested; or
(3) by rearranging the form without changing the substance of the inquiries;

PROVIDED,

that in every case there is shown the appropriate:

(a) notice regarding the optional nature of courtesy titles, (Ms., Miss, Mr., Mrs.),
(b) notice of the option not to disclose alimony, child support, or separate maintenance, and
(c) the notice of limitation concerning marital status inquiries;

IF

the items to which they relate appear on the creditor's form.

EXHIBIT "A"

NOTICE
CREDIT HISTORY FOR MARRIED PERSONS

_____
Credit Union

_____
Address

The Federal Equal Credit Opportunity Act prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided that a person has the capacity to enter into a binding contract); because all or part of a person's income derives from any public assistance program; or because a person in good faith has exercised any right under the Federal Consumer Credit Protection Act. Regulations under the Act give married persons the right to have credit information included in credit reports in the name of both the wife and the husband if both are responsible for the account. This right was created, in part, to insure that credit histories will be available to women who become divorced or widowed.

If your account with us is one that both husband and wife signed for, then you are entitled to have us report credit information relating to the account in both your names. If you choose to have credit information concerning your account with us reported in both your names, please complete and sign the statement below and return it to us.

Federal regulations provide that signing your name below will not change your or your spouse's legal liability on the account. Your signature will only request that credit information be reported in both your names.

If you do not complete and return the form below, we will continue to report your credit history in the same way that we do now.

When you furnish credit information on this account, please report all information concerning the account in both our names.

_____
Account number

_____
Print or type name

_____
Print or type name

_____
Signature of either spouse

EXHIBIT B

CREDIT UNION'S NAME: _____

CREDIT UNION'S ADDRESS: _____

_____

CREDIT UNION'S TELEPHONE NUMBER: _____

STATEMENT OF CREDIT DENIAL, TERMINATION, OR CHANGE

DATE _____

APPLICANT'S NAME: _____

APPLICANT'S ADDRESS: _____

_____

Description of Account, Transaction, or Requested Credit: _____

_____

Description of Adverse Action Taken: _____

_____

_____

PRINCIPAL REASON(S) FOR ADVERSE ACTION CONCERNING CREDIT

- ☐ Credit application incomplete
- ☐ Insufficient credit references
- ☐ Unable to verify credit references
- ☐ Temporary or irregular employment
- ☐ Unable to verify employment
- ☐ Length of employment
- ☐ Insufficient income
- ☐ Excessive obligations
- ☐ Unable to verify income
- ☐ Inadequate collateral
- ☐ Too short a period of residence
- ☐ Temporary residence
- ☐ Unable to verify residence
- ☐ No credit file
- ☐ Insufficient credit file
- ☐ Delinquent credit obligations
- ☐ Garnishment, attachment, foreclosure, repossession, or suit
- ☐ Bankruptcy
- ☐ We do not grant credit to any applicant on the terms and conditions you request.
- ☐ Other, specify: _____

_____

_____

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE

- ☐ Disclosure inapplicable
- ☐ Information obtained in a report from a consumer reporting agency

  Name: _____

  Street Address: _____

  _____

  Telephone Number: _____
- ☐ Information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

EQUAL CREDIT OPPORTUNITY ACT NOTICE

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law concerning this credit union is:

☐ **STATE CHARTERED CREDIT UNIONS**

FEDERAL TRADE COMMISSION
Denver Regional Office
128 U. S. CUSTOMS HOUSE
721 - 19th STREET
DENVER, COLORADO 80202

NATIONAL OFFICE
Equal Credit Opportunity
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

☐ **FEDERAL CHARTERED CREDIT UNIONS**

NATIONAL CREDIT UNION ADMINISTRATION
Regional Office
515 CONGRESS AVENUE
AUSTIN, TEXAS 78701

NATIONAL CREDIT UNION ADMINISTRATION
National Office
2025 M STREET N.W.
WASHINGTON, D.C. 20456

EXHIBIT "C"

How A Spouse May Develop A Credit History or Credit Record

And Explaining The

Duties of A Creditor in The Furnishing of Credit Information

Commentaries
202.5(c)(3)
F. R. 1-27-77
p. 5075 at 5078
16 C.F.R. 600.8

For all accounts (within 90 days after notice)*

AND

For all accounts established after June 1, 1977, on which any applicant's spouse is "contractually liable" on the account

The Creditor Shall

Commentaries
F. R. 1-6-77
p. 1250, 5th unnumbered para. just preceding 202.10(c) "... spouse could request a change even when not entitled to share the credit history ..."

designate and report the account to reflect the fact of the participation of both spouses

when furnishing information concerning credit to

consumer reporting agencies

OR

any other recipients of credit information.

202.10(a)(3)
EXCEPT SEE
202.10(a)(1)(i)
footnote 12
as to "new parties"
F. R. 1-6-77

PLEASE NOTE: The request of a spouse who is not "contractually liable" on the account does not require the creditor to report the credit history or the credit record of the account in the name of that spouse.

The law also requires a creditor to follow the procedure described above whenever an applicant's spouse is permitted to use any account. We know of no credit union that permits a credit union member to use an account unless they are "contractually liable."

202.10(c)
202.5(c)(3)
F. R. 12-17-76
p. 55174

A SPOUSE'S SIGNATURE ON A REQUEST TO CHANGE THE MANNER IN WHICH INFORMATION CONCERNING AN ACCOUNT, IF FURNISHED, SHALL NOT CHANGE THE LEGAL LIABILITY OF EITHER SPOUSE UPON THE ACCOUNT.

---

* The notice marked Exhibit "A" or any notice requesting a separate credit reporting for a spouse "contractually liable."

EXHIBIT "D"

Spouses' Separate Accounts, Privileges and Disadvantages

The Kansas interest rate statutes limit the Finance Chage in certain cases to 18% Annual Percentage Rate up to $1,000 maximum. This is construed to be the total aggregate owed to the creditor.

202.11(c) BUT when each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible Finance Charges or permissible loan ceilings under the law.

This regulation is designed to permit separate accounts, but, as a result, a creditor can require each applicant to pay a greater Finance Charge than if the accounts were combined.

For example, in Kansas there is a ceiling of 18% Annual Percentage Rate for the total amount owed to a single creditor of $1,000 or less and then the rate must drop to a maximum of 14.4% Annual Percentage Rate for all owed to the creditor over the $1,000.

Then if a married couple were jointly liable for $250, each spouse could subsequently become individually liable for $750 and no more to be under the 18% Annual Percentage Rate maximum. When the amount exceeded $750 for each person the rate would need to drop to 14.4%.

Permissible loan ceilings shall be construed to permit each spouse to be separately and individually liable up to the amount of the loan ceiling less the amount for which both spouses are jointly liable.

Where the law limits a credit union to the maximum size of an unsecured loan to an individual, for example $2,500, the loan of one spouse cannot be added to the loan of the other so that security is required when their combined loans exceed $2,500. This does not require that credit unions make unsecured loans to any person who could not qualify individually for credit regardless of sex or marital status. Loans of spouses cannot be aggregated to prohibit borrowing to otherwise qualified persons.

EXHIBIT "E"

NOTICE OF INCOMPLETE APPLICATION

Date _____

Dear Mr. Sample:

202.2(f) p. 5; p. 14 We are sorry to tell you that we cannot process and decide on your application for credit because we have not been able to obtain all the information which we regularly obtain and consider in evaluating applications for the amount and type of credit which you have requested.

202.9(a)(1) (i) & (ii) Reasonable diligence on our part has been exercised to obtain this information, but we need your assistance in obtaining the following information to complete your application:

1. _____

2. _____

3. _____

4. _____

If we do not hear from you by _____, 197__, we shall
(the regulation says within a reasonable time--usually 10 days is good)
process your application even though we lack this information and your application will be denied for being incomplete.

Sincerely,

EXHIBIT "F"

SPECIAL QUESTIONNAIRE WHERE APPLICANT IS RELYING ON ALIMONY, CHILD SUPPORT OR SEPARATE MAINTENANCE PAYMENTS INCOME FOR EXTENSION OF CREDIT

NOTICE: YOU DO NOT NEED TO REVEAL INCOME FROM ALIMONY, CHILD SUPPORT OR SEPARATE MAINTENANCE PAYMENTS. HOWEVER, if you include any such payments in other income information requested below then further information is required to be given.

Source of other income:

If child support, alimony or separate maintenance payments are shown under the income listed above, give the following information:

1. Over what length of time have the payments been made: Beginning date _____. Are any payments delinquent? _____. If so, how many? _____ and how much in Dollars? _____.

2. In what city and county and what state was the court order made for such payments? _____.

Title of Case _____ and Case No. _____.

What other courts have issued orders for such payments? _____

_____.

3. Through what office or officer are the payments made if the payments are not paid directly to you? _____.

4. Give the name and address of the one who is making the payments.

_____.

Where may a credit history be obtained about this person? _____

_____.

202.6(b)(5); 202.5(d)(2); 202.5(c)(2)(v); 202.5(e)(3).

EXHIBIT "G"

SPECIAL QUESTIONNAIRE TO SUPPLEMENT
LAST QUESTION UNDER SECTION D OF CREDIT APPLICATION

What obligation or liability do you have to pay alimony, child support or separate maintenance payments:

State amount, interval and duration of payment obligations and identify type and amount of each type.

	Interval	Amt. of Pmts.	Duration
Alimony			
Child Support			
Separate Maintenance Payments			

202.5(d) Footnote 5, p. 9.

EXHIBIT "H"

OFFER TO GRANT CREDIT OTHER THAN IN
SUBSTANTIALLY THE TERMS REQUESTED

Date _____

Dear Mr. Sample:

On _____ *(date)* you submitted a loan application to this credit union. We will not grant the credit on the amount or terms requested.

However, we would be willing to grant a loan of $_____ on the following terms:

Minimum periodic payment: $_____

Date of first payment: _____

Frequency: _____

ANNUAL PERCENTAGE RATE: _____

Security required: _____

Other: _____

Please advise us at your earliest convenience as to your acceptance of this offer.

Sincerely,

202.2(c)(2)(iv) and (v). Commentaries on p. 1242 do not exempt applications for loan requests on terms contrary to the credit union's policy. Notice of adverse action must be given. 202.2(f).

202.9(a)(1)(iv) p. 14 - 90 days.

202.2(c)(1)(i)

EXHIBIT "I"

CREDIT UNION'S NAME: _____

CREDIT UNION'S ADDRESS: _____

CREDIT UNION'S TELEPHONE NUMBER: _____

STATEMENT OF CREDIT DENIAL, TERMINATION, OR CHANGE

DATE _____

APPLICANT'S NAME: _____

APPLICANT'S ADDRESS: _____

Description of Account, Transaction, or Requested Credit: _____

Description of Adverse Action Taken: _____

The applicant has a right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of this notification. The statement of reasons may be obtained from:

_____

PERSON OR OFFICE

_____

ADDRESS

_____

TELEPHONE NUMBER

The applicant has a right to have any oral statement of reasons confirmed in writing within 30 days, after a written request for confirmation is received by the creditor.

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE

☐ Disclosure inapplicable

☐ Information obtained in a report from a consumer reporting agency.

Name: _____

Street Address: _____

Telephone Number: _____

☐ Information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

EQUAL CREDIT OPPORTUNITY ACT NOTICE

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law concerning this credit union is:

☐ **STATE CHARTERED CREDIT UNION**

FEDERAL TRADE COMMISSION
Denver Regional Office
128 U. S. CUSTOMS HOUSE
721 - 19th STREET
DENVER, COLORADO 80202

NATIONAL OFFICE
Equal Credit Opportunity
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

☐ **FEDERAL CHARTERED CREDIT UNIONS**

NATIONAL CREDIT UNION ADMINISTRATION
Regional Office
515 CONGRESS AVENUE
AUSTIN, TEXAS 78701

NATIONAL CREDIT UNION ADMINISTRATION
National Office
2025 M STREET N.W.
WASHINGTON, D.C. 20456

EXHIBIT "J"

Actuarial tables. If the information you need is not included in the following actuarial tables, contact your Internal Revenue office.
Table I (One Life) applies to all ages. The remaining tables apply to males age 35 to 90 and females age 40 to 95.

Table 1.—Ordinary Life Annuities—One Life—Expected Return Multiples

Ages		Multiples	Ages		Multiples	Ages		Multiples
Male	Female		Male	Female		Male	Female	
6	11	65.0	41	46	33.0	76	81	9.1
7	12	64.1	42	47	32.1	77	82	8.7
8	13	63.2	43	48	31.2	78	83	8.3
9	14	62.3	44	49	30.4	79	84	7.8
10	15	61.4	45	50	29.6	80	85	7.5
11	16	60.4	46	51	28.7	81	86	7.1
12	17	59.5	47	52	27.9	82	87	6.7
13	18	58.6	48	53	27.1	83	88	6.3
14	19	57.7	49	54	26.3	84	89	6.0
15	20	56.7	50	55	25.5	85	90	5.7
16	21	55.8	51	56	24.7	86	91	5.4
17	22	54.9	52	57	24.0	87	92	5.1
18	23	53.9	53	58	23.2	88	93	4.8
19	24	53.0	54	59	22.4	89	94	4.5
20	25	52.1	55	60	21.7	90	95	4.2
21	26	51.1	56	61	21.0	91	96	4.0
22	27	50.2	57	62	20.3	92	97	3.7
23	28	49.3	58	63	19.6	93	98	3.5
24	29	48.3	59	64	18.9	94	99	3.3
25	30	47.4	60	65	18.2	95	100	3.1
26	31	46.5	61	66	17.5	96	101	2.9
27	32	45.6	62	67	16.9	97	102	2.7
28	33	44.6	63	68	16.2	98	103	2.5
29	34	43.7	64	69	15.6	99	104	2.3
30	35	42.8	65	70	15.0	100	105	2.1
31	36	41.9	66	71	14.4	101	106	1.9
32	37	41.0	67	72	13.8	102	107	1.7
33	38	40.0	68	73	13.2	103	108	1.5
34	39	39.1	69	74	12.6	104	109	1.3
35	40	38.2	70	75	12.1	105	110	1.2
						106	111	1.0
36	41	37.3	71	76	11.6	107	112	.8
37	42	36.5	72	77	11.0	108	113	.7
38	43	35.6	73	78	10.5	109	114	.6
39	44	34.7	74	79	10.1	110	115	.5
40	45	33.8	75	80	9.6	111	116	0

Page 12 from I. R. S. Publication 575 entitled, "Tax Information on Pension and Annuity Income," 1977 Edition.

The above table shows that a male of the age of 59 has a life expectancy of 18.9 years and that a female of the age of 59 has a life expectancy of 22.4 years.

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"L"

For Release On Delivery

Statement by

Philip C. Jackson, Jr., Governor

Board of Governors of the Federal Reserve System

before the

Consumer Affairs Subcommittee
of the Committee on Banking, Finance and Urban Affairs

United States House of Representatives

February 9, 1977

Att. L

Mr. Chairman, I appreciate this opportunity to participate on behalf of the Board of Governors in your subcommittee's hearings on the current status of consumer credit laws. While it supports the basic public purpose of consumer credit legislation, the Board has become increasingly concerned about the degree of complexity and overlap of existing laws and hopes the situation can be clarified and simplified. It is small wonder that the members of Congress and the Board have received a substantial quantity of complaints, particularly from small creditors, stating that they have difficulty understanding and complying with all of the laws. Some responsible observers are now questioning whether the existing regulatory framework is providing benefits to the public commensurate to its costs.

To give perspective to the issues we will raise, I would like first to provide a brief review of consumer credit legislation in our country. I will also report generally on the Board's experience to date as the principal agency charged with writing regulations to implement Federal legislation in this field. Finally, I would like to suggest some matters your Committee may want to consider.

With rare exceptions, consumer credit regulatory legislation prior to 1968 was enacted by the various States rather than the Federal government. Even then the laws were complicated. Most States have long had laws setting a ceiling on the price for loans to consumers. To this basic legislation, most States over time added a multiple layering of special conditions and rules.

Your own home State of Illinois, Mr. Chairman, is a typical example. I am told that virtually no consumer credit transactions take place under the Illinois basic interest ceiling law. Instead, they occur under many different laws. For example, the Retail Installment Sales Act governs the credit sale of goods other than motor vehicles, which fall under the Motor Vehicle Retail Installment Sales Act. There are six separate, but partially overlapping, laws in Illinois governing consumer loans. Each of these different laws tends to have its own set of special requirements for contract provisions, notices, administration, advertising, insurance, disclosure and related matters. Thus, even without Federal legislation, the statutory situation was complex.

The Federal government entered the consumer credit field initially through various credit programs concerning home mortgage credit, insurance or guaranties, and farm credit. The Board of Governors first began to regulate consumer credit practices in 1968 with the passage of the Federal Consumer Credit Protection Act, commonly known as Truth in Lending. The Act directed the Board to write implementing regulations which became Regulation Z.

Since 1968, the Congress has passed seven major amendments to the Consumer Credit Protection Act, as well as three separate disclosure statutes involving credit terms. Significantly, eight of these statutory changes have been enacted since October 1974 -- a period of less than 28 months -- and nine of the ten laws have required implementing regulations.

Specifically, the statutory changes include in chronological order:

1. The Fair Credit Reporting Act (1970)
2. The Credit Card Amendments to Truth in Lending (1970)
3. Technical Amendments to Truth in Lending (1974)
4. The Fair Credit Billing Act (1974)
5. The Equal Credit Opportunity Act (1974)
6. The Real Estate Settlement Procedures Act (1974)
7. The Federal Trade Commission Improvement Act (1975)
8. The Home Mortgage Disclosure Act (1976)
9. The Consumer Leasing Act (1976)
10. Amendments to the Equal Credit Opportunity Act (1976)

At the direction of Congress, the Federal Reserve has been involved in developing written regulations under all but one of the Acts. The Board also issues Official interpretations of its regulations. Recently, Congress empowered the Board to authorize Official Staff Interpretations upon which creditors could rely without fear of civil liability, and the staff has begun issuing these interpretations. In addition, our staff has historically answered informal inquiries about the regulations. Although these staff interpretations do not have the force and effect of law, most conscientious creditors react to them as if they did. Finally, the courts have been offering further interpretations of the Acts, regulations, and interpretations. At this time, there are several hundred reported decisions on Truth in Lending alone.

In addition to implementing relatively specific statutory provisions, Congress has directed the Federal Trade Commission and the Board to issue rules and regulations defining and outlawing unfair or deceptive trade practices under the 1975 FTC Improvement Act. Currently pending under that authority are three detailed Trade Regulation Rules proposed by the Commission: the Creditor Practices Rule, dealing with collateral and collection practices; the creditor amendment to the Rule Preserving Consumers' Claims and Defenses (the so-called Holder Rule); and the Used Motor Vehicle Rule.

In summary, we now have a system which layers State laws, State regulations, Federal laws and regulations, staff interpretations, and State and Federal court decisions.

If one had the advantage of knowing in advance that the governmental control of consumer credit would develop in the form I have outlined, two conclusions could readily have been drawn. First, State and Federal law would not fit very well together and, therefore, would produce substantial conflicts and difficulties. The second would be that the entire consumer credit regulation framework would be complex and difficult to understand, administer, and comply with.

The relationship between State and Federal law is complicated by provisions in many of the Acts the Board administers relating to preemption or exemption of State law. When should a State law be preempted by a Federal law? When should transactions within a State be exempted from a Federal law? Further confusion arises from the fact that the various statutes set different standards applicable to different areas of law. In addition, the problem is more complex because the subject matter and purposes of these statutes differ widely. Let me give you some examples of the preemption/exemption problem.

The original Truth in Lending Act set a rather simple standard under which those State disclosure laws found to be "inconsistent" with the Federal law were preempted. Likewise, the Truth in Lending standard for determining when a State should be exempt from Chapter II of the Truth in Lending Act is that the State law must be "substantially similar" to the Federal law.

The Fair Credit Billing Act carried the standard for Federal preemption of State law one step further. As under Truth in Lending, a State's law is preempted to the extent that it is found inconsistent. However, the Board may not find that the State law is inconsistent to the extent that it provides greater protection to the consumer. This additional step has caused considerable conceptual difficulty. How should the laws be compared - in their entireties, or section by section? Defining and applying the standard raises still more problems. For example, New York requires that a billing inquiry be sent by registered mail; the Federal law does not. It could be argued that the New York law is more protective

since it provides for better proof that the customer sent the inquiry. Alternatively, one could argue that it is less protective and thus inconsistent because of the additional burden placed upon the consumer to register the letter and pay the increased postage costs.

The Consumer Leasing Act adds a further complication. Under it, to be protected from preemption, an otherwise inconsistent State law must provide not only greater protection, but greater benefit to the consumer.

While the preemption/exemption standards under the Equal Credit Opportunity Act are similar to the Truth in Lending Act, the subject matter of the Act--adverse discrimination--is so different as to make the experience gained under Truth in Lending of limited value to the Board. Determining what is inconsistent may not be too difficult. For example, Ohio prohibits discrimination on the basis of age. The Federal law permits the use of age in a credit scoring system so long as the age of an elderly applicant is not assigned a negative factor. The Ohio law is in direct conflict, and thus is preempted as of March 23, 1977.

Determining what is more protective in the context of an anti-discrimination law is much trickier. Several years ago civil rights groups insisted that questions as to an applicant's race should not be permitted. Today, they take the position that not only should race be asked, but that it should be recorded for enforcement purposes.

Which is more protective? Similar questions arise with respect to recordkeeping as to sex, marital status, and age.

Other State statutes may be affected as well. For example, in Alabama a person gains legal capacity to contract at the age of 21--unless that person is married, in which case the legal age is 18. Can a creditor take that statute into account in granting credit? If the creditor does so, is the creditor discriminating on the basis of marital status? If that is illegal discrimination, then the Alabama law may be preempted. But if the Alabama statute is preempted, does that mean that an unmarried 18-year-old can enter into a binding contract or that a married 18-year-old cannot?

The intricacies of the State-Federal relationship is not the only source of complexity. The economic practices and customs of every facet of American society are more varied and divergent than any law or regulation can anticipate. A rule designed to meet one need often produces unexpected consequences in another situation. The extensive regulations that result are a direct product of the dynamic credit system to which they apply.

Given these dynamics and this complexity, given the sheer quantity of State and Federal statutes, regulations, interpretations and judicial decisions, and given the fact that they fit together so badly, it is not surprising that the loan officer of a small bank - charged with the varied responsibilities of: making installment loans, buying dealer paper, overseeing a credit card operation, making home mortgage loans, extending construction credit, arranging for credit insurance, and so forth - is hard pressed to comply.

The Board of Governors is taking several actions in an effort to be responsive to some of the obvious needs that I have outlined. We have established a Consumer Advisory Council in accordance with the provisions of the 1976 statute. The Council met in November, with the next meeting scheduled for March 10. These meetings are open to the public. Membership of the Council is broadly representative of the interests of consumers and creditors alike. The Council is establishing study groups which plan to make on-site investigations of large and small creditors to better understand the ramifications of consumer credit laws regarding the credit granting process.

The Board also has contracted with the Survey Research Center of the University of Michigan to undertake a special consumer survey intended to provide much needed information on the consumer's relationship to credit. Several other Federal agencies are joining us in this survey effort. It is our hope that the survey will enable us to understand better the various circumstances in which consumers use credit, to evaluate consumers' perceptions of and interest in the benefits that consumer credit laws provide, and to gain insight as to how regulations can be more responsive to the consumer's needs.

In order to assist creditors, particularly small ones, in their efforts at compliance, the Board is expanding its issuance of approved forms which may be used by creditors without fear of violating technical provisions of the statutes or regulations. We are also continuing to issue binding staff interpretations where necessary. Under the statute, which your Committee authorized, creditors relying on these staff interpretations are protected from the penalties of the law should the courts later determine that such interpretations are invalid.

Members of the Board's staff are engaged in a review of present consumer credit regulations for the purpose of developing proposals to make them easier to understand and comply with.

The Board recently promulgated a new Regulation AA to encourage consumers to inform the System of their credit problems and to provide a better basis for action on the part of the Board in response to these consumer complaints.

Finally, as the supervisor for State member banks, we are substantially expanding our compliance and enforcement activities under the various consumer credit statutes. Our experience in this process will enable us to better understand the impact of our regulations issued under consumer credit statutes.

The Board of Governors made a number of specific legislative recommendations in its 1975 year-end report. Among these was a suggestion that the Congress re-examine the Truth in Lending Act's provisions on the issuance of credit cards, and on cardholder liability in the event of unauthorized use, in light of recent developments in the electronic funds transfer field. Specifically, the Board recommended that Congress extend the $50 limit on consumer liability to non-credit funds transfer cards. In addition, the Board suggested that the Congress reconsider the need for the existing ban on the unsolicited issuance of credit cards. In the Board's view, the present limitation on liability has itself adequately curtailed the profligate issuance of credit cards prevalent in the mid-1960's, while the Act's provisions restricting credit card issuance have lessened competition in the credit card field. We sincerely hope that your Committee may find time to consider these proposals, as well as the other recommendations in the Board's report.

In our view, substantial benefits to the public could be realized if there were to be a determination as to the proper role of the States versus the Federal government in consumer credit protection statutes. Such a determination should cover not only which law might govern or which might be preemptive of the other, but also such questions as which supervisor - State or Federal - is charged with policing organizations operating within the States. As the larger creditors conduct their affairs over wide geographical areas, there is more urgent need to understand which benefits could accrue to the public from uniformity of regulations and procedures. Such benefits would then need to be weighed against our historic rights of the citizens of the several States to pass laws uniquely applicable to those who reside therein.

The effort to simplify consumer credit laws and regulations is a complex one in and of itself. While the need warrants your Committee's consideration, it will not be an easy one to accomplish. Even some creditors would argue against any attempt to simplify. Some feel that they have now mastered the complexities of the regulations and that any attempts to simplify will result only in a new set of requirements which will require substantial retraining and produce another period of uncertainty.

There are many who feel that complexity of the Truth in Lending statute is a by-product of the penalties which the Act imposes. The original concept of private enforcement of this statute has obvious imperfections. We believe there would be substantial potential for simplification if the penalties provided as a result of private suit or class action were restricted to instances of substantive violations that impair the consumer's capacity to

comparison shop for credit. Technical violations of the statute might well be limited to administrative supervisory enforcement.

Mr. Chairman, I hope these comments have been responsive to the Committee's needs and will be pleased to respond to any questions you may have.

"M"

State of Kansas . . . ROBERT F. BENNETT, *Governor*

DEPARTMENT OF HEALTH AND ENVIRONMENT

DWIGHT F. METZLER, *Secretary*

Topeka, Kansas 66620

Bureau of Health Planning
Building 321
(913) 862-9360, ext. 536 or 535

July 27, 1977

M E M O R A N D U M

TO: Bill Wolfe, Legislative Research

FROM: Richard J. Morrissey, Health Planning Consultant

SUBJECT: Department of Health and Environment's Comments on Proposal #13, Special Committee on Commercial and Financial Institutions

There is an inherent problem in mandating coverage on a piecemeal basis when there presently is no minimum standard coverage. The legislative process casts coverage in stone and is not the proper approach - unless perhaps it is done in context with the entire range of desirable minimum benefits. This could best be accomplished via regulations from the Insurance Commissioner.

If outpatient mental health coverage is required, the following points should be considered.

1) Coverage must be based on a "first dollar" deductible to avoid uncontrolled escalation of costs. This feature enhances the likelihood that the patient will be motivated to cooperate with the treatment program.
2) Premiums based on historical data on low risk groups are not an accurate predictor of future costs. Premiums will increase as utilization increases. The real cost impact is not reflected in the premium but in the expenditures generated by the coverage.

Atch. M

MI-94

3) If the barrier to use of the covered services is the "stigma" associated with those services, how will mandated coverage reduce that barrier?

RJM/cks

cc: Joe Harkins