## FEDERAL RESERVE SYSTEM

## 12 CFR 226

## Regulation Z; Docket No. R-1167

## Truth in Lending

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed Rule.

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**SUMMARY:** The Board is proposing to amend Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation. Regulation Z would be revised to define more specifically the standard for providing "clear and conspicuous" disclosures, and to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, M, and DD appear elsewhere in today's Federal Register. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions. The Board also is proposing to add an interpretative rule of construction to state that the word "amount" represents a numerical amount throughout Regulation Z. The proposed updates to the staff commentary also provide guidance on consumers' exercise of the right to rescind certain home-secured loans. In addition, the proposal includes several technical revisions to the staff commentary.

**DATES:** Comments must be received on or before January 30, 2004.

**ADDRESSES**: Comments should refer to Docket No. R-1167 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452-3819 or 452-3102. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to
§ 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

**FOR FURTHER INFORMATION CONTACT**: Krista P. DeLargy and Elizabeth A. Eurgubian, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 et seq., is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors. TILA is implemented by the Board's Regulation Z (12 CFR part 226). An official staff commentary interprets the requirements of Regulation Z (12 CFR part 226 (Supp. I)).

## II. Proposed Revisions

Subpart A–General

Section 226.2–Definitions and Rules of Construction

2(a)(27) Clear and Conspicuous

Section 122(a) of TILA requires disclosures to be made clearly and conspicuously. See 15 U.S.C. 1632. This standard is implemented in Regulation Z. See § 226.5(a)(1); § 226.17(a)(1); § 226.31(b). Guidance on how creditors may comply with the clear and conspicuous standard is contained in the staff commentary. See comment 5(a)(1)-1; 17(a)(1)-1. The commentary states that under this standard, disclosures must be in a reasonably understandable form. For purposes of the disclosures provided with credit card solicitations and applications, the commentary also notes that disclosures must be readily noticeable to the consumer. See comment 5a(a)(2)-1.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be "clear and conspicuous" under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and "clear and readily understandable" under Regulation E (Electronic Fund Transfers). In interpreting the "clear and conspicuous" standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be "in a reasonably understandable" form; similarly, under Regulation DD disclosures must be in a format that allows consumers "to readily understand the terms of their

account." In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the "clear and conspicuous" standard to mean that a disclosure is "reasonably understandable and designed to call attention to the nature and significance of the information" in the disclosure. 12 CFR § 216.3(b)(1). Regulation P also provides a series of examples of how to satisfy the standard. 12 CFR § 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation Z by adding a definition for clear and conspicuous in § 226.2(a)(27), consistent with the "clear and conspicuous" definition in Regulation P. The staff commentary to Regulation Z also would be revised to add comments 2(a)(27)-1 and -2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, M, and DD appear elsewhere in today's Federal Register. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Proposed comments 2(a)(27)-3 and –4 contain guidance currently in comment 5(a)(1)-1. The "clear and conspicuous" standard does not prohibit adding other items to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(a)(27)-3 would clarify, however, that the presence of other information may be a factor in determining whether the "clear and conspicuous" standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the "clear and conspicuous" standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). See proposed comment 2(a)(27)-2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type size requirement. Similarly, the proposal also would not affect other format rules, such as the existing requirement for making some disclosures more conspicuous than others (See § 226.5(a)(2); § 226.17(a)(2)), or segregating some specific information (See § 226.17(a)(1)).

To eliminate redundancy with proposed § 226.2(a)(27) and its accompanying commentary, the Board also proposes to revise the following commentary provisions in Regulation Z that address the "clear and conspicuous" standard: comments 5(a)(1)-1, 5a(a)(2)-1, 16-1, 24-1, and Appendix K (d)(2)-1. In this regard, in comment 5a(a)(2)-1,

the guidance regarding disclosures for credit card applications and solicitations that are transmitted by electronic communication, has been deleted. Guidance regarding the "clear and conspicuous" standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

2(b) Rules of Construction

The Board proposes to add an interpretative rule of construction in § 226.2(b)(5) stating that where the word "amount" is used to describe a disclosure requirement it refers to a numerical amount throughout Regulation Z. This interpretation addresses a matter discussed in a recent court decision regarding the disclosure of payments scheduled to repay a closed-end credit transaction. See 15 U.S.C. 1638(a)(6); 12 CFR § 226.18(g). The Board believes that the decision, by endorsing narrative descriptions of amounts rather than numerical amounts, may lead to confusion in disclosures.

The term "amount" has general applicability throughout Regulation Z and the term "amount" is used throughout TILA, for example, to describe disclosures such as the amount financed, the amounts being disbursed to the consumer and to third parties, and the total of payments, which is defined as the amount the consumer will have paid after making all scheduled payments. A broad interpretation of the term suggesting that narrative descriptions may replace numerical "amounts" contravenes TILA's purpose to provide consumers with clear and uniform credit disclosures. Proposed comment 2(b)-2 would provide examples of how the interpretative rule of construction for "amount" applies in certain disclosures required by Regulation Z.

Subpart B–Open-end Credit

Section 226.15–Right of Rescission

15(a) Consumer's Right to Rescind

15(a)(2)

Section 125(a) of TILA provides that, in certain credit transactions in which the consumer's principal dwelling secures an extension of credit, the consumer may rescind the transaction for three business days after becoming obligated on the debt (and for open-end plans, after opening or increasing the credit limit on the plan). See 15 U.S.C. 1635(a); 12 CFR § 226.15(a)(1). The rescission period may extend up to three years in certain cases. The right of rescission was created to allow consumers time to reexamine their credit contracts and cost disclosures and to reconsider whether they want to place their home at risk by offering it as security for the credit. A consumer exercises the right to rescind by notifying the creditor of the rescission by mail, telegram, or other means of written communication. Creditors must provide consumers with a form to use in exercising the right to rescind, which must include the name and address of the creditor or agent of the creditor to receive the notice. See § 226.15(b). Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means,

when delivered to the creditor's designated place of business. See § 226.15(a)(2).

Comment 15(a)(2)-1 states that a creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). The comment would be revised to address situations where a creditor fails to provide the required form or designate an address for sending the notice. The proposed comment would provide that in such cases, if a consumer sends the notice to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, the consumer's notice of rescission may be effective if under the applicable state law, delivery to that person would be deemed to constitute delivery to the creditor or assignee.

15(d) Effects of Rescission

When a consumer exercises the right to rescind a mortgage transaction, the consumer is not liable for any finance charges or other charges and any security interest in the consumer's home becomes void. See 15 U.S.C. 1635(b); § 226.15(d)(1). After the transaction is rescinded, the creditor must tender any money or property given to anyone in connection with the transaction within a specified time frame, which triggers the consumer's duty to return any money or property that the creditor delivered to the consumer, although a court may modify these procedures. See § 226.15(d)(2)-(4).

Comment 15(d)(4)-1 would be revised to state expressly that a consumer's substantive right to rescind under § 226.15(a)(1) and § 226.15(d)(1) is not affected by the procedures referred to in § 226.15(d)(2) and (3), or the modification of those procedures by a court. Accordingly, where consumers seek rescission and the matter is contested by the creditor, a determination regarding consumers' right to rescind would normally be made before a court determines the amounts owed and establishes the procedures for the parties to tender any money or property. The sequence of procedures should not affect consumers' ability under TILA to establish their substantive right to rescind and to have the lien amount reduced, which may be necessary before consumers are able to establish how they will refinance or otherwise repay the loan.

Subpart C–Closed-End Credit

Section 226.18–Content of Disclosures

18(c) Itemization of Amount Financed

A technical revision would be made to comment 18(c)(1)(iii)-1, to conform a citation to footnote 41 of Regulation Z. No substantive change is intended.

Section 226.19 – Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions

Section 226.19(b) applies to all closed-end variable-rate transactions that are

secured by the consumer's principal dwelling and have a term greater than one year. Guidance about the applicability of § 226.19 to construction loans was published in comment 19(b)-1. 54 FR 9422, March 7, 1989. That guidance has been inadvertently appended to comment 19(b)(1)-1 in the Code of Federal Regulations. The two comments are restated in their correct form for reprinting in the Code of Federal Regulations. No substantive change is intended.

Section 226.23–Right of Rescission

23(a) Consumer's Right to Rescind

For the reasons discussed above, comment 23(a)(2)-1 would be revised to state the rule for effective delivery of a rescission notice when the creditor fails to provide the required form or designate an address for sending the notice (See supplementary information to proposed comment 15(a)(2)-1.)

Section 226.23–Right of Rescission

23(d) Effects of Rescission

For the reasons discussed above, comment 23(d)(4)-1 would be revised to expressly state that a consumer's substantive right to rescind under § 226.23(a)(1) and § 226.23(d)(1) is not affected by the procedures referred to in § 226.23(d)(2) and (3), or the modification of those procedures by a court. (See supplementary information to proposed comment 15(d)(4)-1.)

Subpart D–Miscellaneous

Section 226.27–Language of Disclosures

In March 2001, the Board revised § 226.27 to permit creditors to provide disclosures in languages other than English as long as disclosures in English are available to consumers who request them. 66 FR 1739, March 30, 2001. Technical revisions would be made to comment 27-1, and comment 27-2 would be deleted to conform the commentary to § 226.27, as amended. No substantive change is intended.

Subpart E–Special Rules for Certain Home Mortgage Transactions

Section 226.32–Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

Rules for certain closed-end mortgage loans in § 226.32 are triggered, in part, by the amount of "points and fees" payable by the consumer at or before loan closing and the "total loan amount." See § 226.32(a)(1)(ii). Comment 32(a)(1)(ii)-1, which was added in 1996, provides examples for calculating the "total loan amount." 61 FR 14952, April 4, 1996. A technical revision would be made to comment 32(a)(1)(ii)-1, to correct a dollar amount given in one of the examples. No substantive change is intended.

Request for Information Regarding Debt Cancellation and Debt Suspension Agreements

Some lenders have replaced credit insurance products with products known as debt cancellation agreements and debt suspension agreements. Under a debt cancellation agreement or debt suspension agreement, a creditor agrees to cancel, or temporarily suspend, all or part of the borrower's repayment obligation upon the occurrence of a specified event, such as death, disability, or unemployment. The fee for a debt cancellation or debt suspension agreement can be collected monthly or in a lump sum.

At least one state has said it will regulate debt cancellation and suspension products as insurance, other states have said they will regulate the products as bank products and not as insurance, and still others have not yet announced positions. The Office of the Comptroller of the Currency (OCC) has recently issued regulations governing sales of debt cancellation and suspension agreements by national banks. See 12 CFR 37.1 et seq.

Under the TILA and Regulation Z, debt cancellation agreements are generally subject to the same disclosure rules as credit insurance. In 1996, the Board revised Regulation Z to establish essentially identical disclosure rules for credit insurance and debt cancellation agreements. Accordingly, although debt cancellation fees satisfy the definition of a "finance charge," they may be excluded from the finance charge on the same conditions as credit insurance premiums (without regard to whether debt cancellation agreements are deemed to be insurance contracts under state law). The types of debt cancellation agreements eligible for the exclusion are limited to those that provide for cancellation of or all or part of a debtor's liability (1) in case of accident or loss of life, health, or income or (2) for amounts exceeding the value of collateral securing the debt (commonly referred to as "gap" coverage, frequently sold in connection with motor vehicle loans). See §§ 226.4(b)(7) and (10), 4(d)(1) and (3).

Industry representatives have asked the Board to address disclosure issues under TILA and Regulation Z that may be raised by the sale of debt cancellation and debt suspension products. Anecdotal evidence suggests that the sale of those products in lieu of credit insurance has increased and that creditors are offering expanded coverage, for example to suspend repayment obligations for life-cycle events such as marriage and

divorce. Some industry representatives have stated that additional guidance may be useful in clarifying the circumstances in which products offering expanded coverage qualify for the exclusions in § 226.4(d)(3) for debt cancellation fees, and in clarifying what disclosures should be provided to consumers in certain circumstances.

To consider the requests for guidance more fully, information and comment are solicited as follows:

- What are the similarities and differences among credit insurance, debt cancellation coverage, and debt suspension coverage, in the case of both closed-end and open-end credit?

- With what types of closed-end and open-end credit are debt cancellation and debt suspension products sold? Do creditors typically package multiple types of coverage (e.g., disability and divorce), or sell them separately? Do creditors typically sell the products at, or after, consummation (for closed-end credit) or account opening (for open-end credit plans)?

- What disclosures are made with the sale of a product or upon conversion from one product to another, whether required by TILA or other laws? How are monthly or other periodic fees disclosed to consumers?

- Under Regulation Z, fees for credit protection programs written in connection with a credit transaction are finance charges but some fees may be excluded from the disclosed finance charge if required disclosures are made and the consumer affirmatively elects the optional coverage in writing. See §§ 226.4(b)(7) and (10), 4(d)(1) and (3). Is there a need for guidance concerning the applicability of those provisions to certain types of coverage now available? Are the required disclosures adequate for all types of products subject to § 4(d)(1) or 4(d)(3)?

- Under TILA, a credit card issuer must notify a consumer before changing the consumer's credit insurance provider. See 15 U.S.C. 1637(g); 12 CFR § 226.9(f). Card issuers that intend to change credit insurance providers need only notify consumers that they may opt out of the new coverage. Should the Board interpret or amend § 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements? If so, is there a need to address conversions other than for credit card accounts?

- OCC regulations for national bank sales of debt cancellation and suspension agreements require a customer's affirmative election of the product. If the Board interprets or amends § 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements, what additional guidance would card issuers need, if any, to comply with both rules?

**III. Form of Comment Letters**

Comment letters should refer to Docket No. R-1167 and, when possible, should

use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to regs.comments@federalreserve.gov.

## IV. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

## V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation Z. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

## VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226. This collection is mandatory (15 U.S.C. 1601 et seq.) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The respondents and recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide creditors with a more uniform definition of providing "clear and conspicuous" disclosures and examples of how to satisfy the "clear and conspicuous" standard. The proposed revisions also would provide that the term "amount" represents a numerical amount throughout Regulation Z. The proposed updates to the staff commentary also provide guidance on consumers' exercise of rescission for certain home-secured loans. While the proposal would amend Regulation Z and the staff commentary, it is expected that these revisions would not increase the paperwork burden of creditors. With respect to state member banks, there are 1,312

respondents and recordkeepers. Current annual burden is estimated to be 618,398 hours.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**Text of Proposed Revisions**

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

**List of Subjects in 12 CFR Part 226**

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

**PART 226 – TRUTH IN LENDING (REGULATION Z)**

1. The authority citation for part 226 would continue to read as follows:
**Authority**: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.2 is amended by adding a new paragraph (a)(27) and adding a new paragraph (b)(5) to read as follows:

**Subpart A – General**

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**§ 226.2 Definitions and rules of construction.**

(a) Definitions. For purposes of this regulation, the following definitions apply:

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►(27) Clear and conspicuous means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.◄

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(b) Rules of construction. For purposes of this regulation, the following rules of construction apply:

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►(5) Where the word "amount" is used in this regulation to describe disclosure requirements, it refers to a numerical amount.◄

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3. In Supplement I to Part 226:

a. Under Section 226.2 Definitions and Rules of Construction, under (a) Definitions, a new paragraph title (27) Clear and conspicuous is added, and new paragraphs (27) 1. through (27) 4. are added; and under (b) Rules of Construction, a new paragraph (b)2. is added.

b. Under Section 226.5 General Disclosure Requirements, under Paragraph 5(a)(1), paragraph 1. is revised.

c. Under Section 226.5a Credit and Charge Card Applications and Solicitations, under Paragraph 5a(a)(2), paragraph 1. is revised.

d. Under Section 226.15 Right of Rescission, under Paragraph 15(a)(2), paragraph 1. is revised, and under Paragraph 15(d)(4), paragraph 1. is revised.

e. Under Section 226.16 Advertising, paragraph 1. is revised.

f. Under Section 226.18 Content of Disclosures, under Paragraph 18(c)(1)(iii), paragraph 1. is revised.

g. Under Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions, under 19(b) Certain variable-rate transactions, paragraph 1. is revised, and under Paragraph 19(b)(1), paragraph 1. is revised.

h. Under Section 226.23 Right of Rescission, under Paragraph 23(a)(2), paragraph 1. is revised, and under Paragraph 23(d)(4), paragraph 1. is revised.

i. Under Section 226.24 Advertising, paragraph 1. is revised.

j. Under Section 226.27, the section title is revised, paragraph 1. is revised, and paragraph 2. is removed and reserved.

k. Under Section 226.32 Requirements for Certain Closed-End Home Mortgages, under Paragraph 32(a)(1)(ii), paragraph 1.ii. is revised.

l. Under Appendix K–Total Annual Loan Cost Rate Computations for Reverse Mortgage Transaction, under (d) Reverse mortgage model form and sample form, under (d)(2), paragraph 1. would be revised.

**SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS**

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**SUBPART A – GENERAL**

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Section 226.2–Definitions and Rules of Construction

2(a) Definitions.

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►2(a)(27) Clear and conspicuous.

1. Reasonably understandable. Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and

vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. Designed to call attention. Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. Other information. Except as otherwise provided, the "clear and conspicuous" standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the "clear and conspicuous" standard is met.

4. Use of codes or symbols. The "clear and conspicuous" standard does not prohibit using codes or symbols such as APR (for annual percentage rate), FC (for finance charge), or Cr (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.◄

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2(b) Rules of Construction

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►2. Amount. A creditor would state a dollar amount when disclosing the amount financed, finance charge, or the amount of any payment for a closed-end transaction (Subpart C). A creditor might explain how the amount of any finance charge will be determined by stating a percentage (for example, where the fee is a percentage of each cash advance) or a dollar amount (for example, a minimum finance charge of $1.00) in disclosures provided before the first transaction under an open-end plan (Subpart B).◄

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**SUBPART B – OPEN-END CREDIT**

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Section 226.5 – General Disclosure Requirements

5(a) Form of disclosures.

Paragraph 5(a)(1).

1. Clear and conspicuous. ►See § 226.2(a)(27) and accompanying comments.◄ **[**The "clear and conspicuous" standard requires that disclosures be in a reasonably understandable form. Except where otherwise provided, the standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular

type size. (But see comments 5a(a)(2)-1 and -2 for special rules concerning section 226.5a disclosures for credit card applications and solicitations.) The standard does not prohibit:

- Pluralizing required terminology (finance charge and annual percentage rate).
- Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.
- Sending promotional material with the required disclosures.
- Using commonly accepted or readily understandable abbreviations (such as mo. for month or Tx. for Texas) in making any required disclosures.
- Using codes or symbols such as APR (for annual percentage rate), FC (for finance charge), or Cr (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.**]**

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Section 226.5a—Credit and Charge Card Applications and Solicitations

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5a(a) General Rules

5a(a)(2) Form of Disclosures

1. Clear and conspicuous standard. ►See § 226.2(a)(27) and accompanying comments.◄ **[**For purposes of § 226.5a disclosures, "clear and conspicuous" means in a reasonably understandable form and readily noticeable to the consumer. As to type size, disclosures in 12-point type are deemed to be readily noticeable for purposes of section 226.5a. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard. Disclosures that are transmitted by electronic communication are judged for purposes of the clear-and-conspicuous standard based on the form in which they are provided even though they may be viewed by the consumer in a different form.**]**

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Section 226.15—Right of Rescission

15(a) Consumer's right to rescind.

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Paragraph 15(a)(2).

1. Consumer's exercise of right. The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.15(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.15(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). ►Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission and the consumer sends the notification to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, state law determines whether delivery to that person constitutes delivery to the creditor or assignee.◄

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15(d) Effects of rescission.

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Paragraph 15(d)(4).

1. Modifications. The procedures outlined in § 226.15(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. ►The consumer's substantive right to rescind under § 226.15(a)(1) and § 226.15(d)(1) is not affected by the procedures referred to in § 226.15(d)(2) and (3), or the modification of those procedures by a court.◄

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Section 226.16—Advertising

1. Clear and conspicuous standard. ►See § 226.2(a)(27) and accompanying comments.◄ **[**Section 226.16 is subject to the general "clear and conspicuous" standard for subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.**]**

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**SUBPART C – CLOSED-END CREDIT**

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Section 226.18—Content of Disclosures

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18(c) Itemization of amount financed.

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Paragraph 18(c)(1)(iii)

1. Amounts paid to others. This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled "insurance" or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of insurance premiums paid to different companies. Except for insurance companies and other categories noted in footnote **[**40**]** ►41◄, third parties must be identified by name.

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Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

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19(b) Certain variable-rate transactions.

1. Coverage. Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial acquisition of the consumer's principal dwelling, but also to any other closed-end variable-rate transaction secured by the principal dwelling. Closed-end variable-rate transactions that are not secured by the principal dwelling, or are secured by the principal dwelling but have a term of one year or less, are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b). (Furthermore, "shared-equity" or "shared-appreciation" mortgages are subject to the disclosure requirements of

§ 226.18(f)(1) rather than those of § 226.19(b) regardless of the general coverage of those sections.) For purposes of this section, the term of a variable-rate demand loan is determined in accordance with the commentary to § 226.17(c)(5). ►In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).◄

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Paragraph 19(b)(1).

1. Substitute. Creditors who wish to use publications other than the Consumer Handbook on Adjustable Rate Mortgages must make a good faith determination that their brochures are suitable substitutes to the Consumer Handbook. A substitute is suitable if it is, at a minimum, comparable to the Consumer Handbook in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the Consumer Handbook. **[**In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).**]**

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Section 226.23—Right of Rescission

23(a) Consumer's right to rescind.

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Paragraph 23(a)(2).

1. Consumer's exercise of right. The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.23(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.23(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.23(b). ►Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission and the consumer sends the notification to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, state law determines whether delivery to that person constitutes delivery to the creditor or assignee.◄

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23(d) Effects of rescission.

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Paragraph 23(d)(4).

1. Modifications. The procedures outlined in § 226.23(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and

prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. ► The consumer's substantive right to rescind under § 226.23(a)(1) and § 226.23(d)(1) is not affected by the procedures referred to in § 226.23(d)(2) and (3), or the modification of those procedures by a court. ◄

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Section 226.24—Advertising

1. Clear and conspicuous standard ►See § 226.2(a)(27) and accompanying comments. On a merchandise tag that is an advertisement under the regulation, a creditor is not prohibited under the "clear and conspicuous" standard from including the necessary credit terms on both sides of the tag, so long as each side is accessible. ◄ **[**This section is subject to the general "clear and conspicuous" standard for this subpart but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.**]**

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**SUBPART D – MISCELLANEOUS**

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Section 226.27—**[**Spanish**]** Language ►of ◄Disclosures

1. Subsequent disclosures. If a creditor **[**in Puerto Rico**]** provides initial disclosures in **[**Spanish**]** ►a language other than English ◄, subsequent disclosures need not be in **[**Spanish**]** ►that other language ◄. For example, if the creditor gave Spanish-language initial disclosures, periodic statements and change-in-terms notices may be made in English.

2. [Removed and reserved.]

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**SUBPART E – SPECIAL RULES for CERTAIN HOME MORTGAGE TRANSACTIONS**

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Section 226.32 – Requirements for Certain Closed-end Home Mortgage

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Paragraph 32(a)(1)(ii)

1. Total loan amount. For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to section 226.18(b), and deducting any cost listed in section 226.32(b)(1)(iii) and section 226.32(b)(1)(iv) that is both included as points and fees under section 226.32(b)(1) and financed by the creditor. Some examples follow, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in points. A $500 premium for optional credit life insurance is used in one example

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ii. If the consumer pays the $300 fee for the creditor-conducted appraisal in cash at closing, the $300 is included in the points and fees calculation because it is paid to the creditor. However, because the $300 is not financed by the creditor, the fee is not part of the amount financed under section 226.18(b) **[**($10,000, in this case)**]**. ►In this case, the amount financed is the same as ◄ the total loan amount **[**is**]** $9,600 ($10,000, less $400 in prepaid finance charges).

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**APPENDIX K—TOTAL-ANNUAL-LOAN-COST RATE COMPUTATIONS FOR REVERSE-MORTGAGE TRANSACTIONS**

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(d) Reverse-Mortgage Model Form and Sample Form

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(d)(2) Sample Form

1. General. **[**The "clear and conspicuous" standard for reverse-mortgage disclosures does not require disclosures to be printed in any particular type size.**]** ►The "clear and conspicuous" standard applies to disclosures required by § 226.33.◄ Disclosures may be made on more than one page, and use both the front and the reverse sides, as long as the pages constitute an integrated document and the table disclosing the total annual loan-cost rates is on a single page.

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By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson (signed)
Jennifer J. Johnson,
Secretary of the Board