agreements) offer protection to consumers in the event the vehicle is stolen or destroyed and the motor vehicle insurance proceeds are insufficient to extinguish the debt. Under these agreements, in return for a fee paid, the consumer is not held liable for the remaining balance due on the loan. Other types of agreements may provide for debt cancellation if the borrower dies or becomes disabled. In some states, debt cancellation agreements may be regulated as or otherwise considered insurance contracts.

The Board has received questions from creditors about the proper treatment of fees for debt cancellation agreements. Section 226.4(d) allows a creditor to exclude optional credit life and certain property insurance premiums from the finance charge if the creditor meets certain conditions, including disclosure of the premium. Some creditors believe that debt cancellation fees should uniformly be treated as § 226.4(d) insurance premiums under the regulation. These creditors generally believe that the fees for optional debt cancellation contracts should be excluded from the finance charge. An alternative view is that the fees may be treated as insurance premiums only if the contract is considered insurance under state law.

Proposed comment 4(a)–8 follows the state law analysis. The proposed comment provides that if a debt cancellation agreement is regulated as or considered insurance under state law, the fee may be excludable from the finance charge in accordance with the rules in § 226.4(d). That is, under the proposed comment the fee may be excludable if the insurance is properly characterized as credit life, accident, health or loss-of-income insurance as specified in § 226.4(d)(1), or as insurance against loss of or damage to property, or against liability arising out of the ownership or use of property as specified in § 226.4(d)(2). Insurance protecting the creditor against credit loss is a finance charge. (See § 226.4(b)(5) and accompanying commentary.)

If state law does not regulate or consider the agreement to be insurance, then the general rules in § 226.4(a) apply. Under § 226.4(a), debt cancellation fees paid to a creditor are treated as finance charges because they are charged by the creditor as an incident to the extension of credit and, although optional, the fees are not of a type payable in a comparable cash transaction.

4(d) Insurance

Comment 4(d)–5 would be revised to clarify that insurance is deemed to be required—and the premiums treated and disclosed as finance charges—when a consumer has several alternatives to fulfill a condition to a credit extension, one of which is to purchase insurance from the creditor and the consumer elects that option. For example, where, as a condition to obtaining a credit card, a consumer must purchase a life insurance policy from the creditor, assign an existing policy, or pledge another form of security, such as a certificate of deposit, if the consumer purchases the insurance from the creditor, the premiums are finance charges.

Subpart B—Open-end Credit

Section 226.6—Initial Disclosure Statement

6(b) Other Charges

Comment 6(b)–1 would be revised to state that a membership fee to join an organization is an ''other charge'' if the primary benefit of membership is the opportunity to apply for a credit card and other benefits are incidental. For example, if an organization offers, in addition to the opportunity for a credit card account, only minor benefits such as a newsletter and a member information hotline, a fee to join the organization should be disclosed as an ''other charge.''

Section 226.12—Special Credit Card Rules

12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer

12(c)(2) Adverse Credit Reports Prohibited

Proposed comment 12(c)(2)–2 provides guidance on when a card issuer may consider a dispute settled for purposes of reporting an amount in dispute as delinquent. Until the card issuer conducts a reasonable investigation, the disputed amount may not be collected or reported as delinquent.

Section 226.14—Determination of Annual Percentage Rate

14(c) Annual Percentage Rate for Periodic Statements

Comment 14(c)–10 would provide guidance on calculating the APR on periodic statements when a transaction occurs at the end of one cycle, but is posted to the account in a subsequent cycle, such as when a cardholder obtains a cash advance (for which there is a transaction fee) on the last day of a billing cycle and the transaction is posted to the cardholder's account on the second day of the following cycle. The transaction (and fee, if applicable) are included on the statement reflecting the cycle in which the transaction posted, and the proposed comment clarifies how creditors calculate the APR to reflect the delay in posting.

Subpart C—Closed-end Credit

Section 17—General Disclosure Requirements

17(c) Basis of Disclosure and Use of Estimates

Paragraph 17(c)(1)

Comment 17(c)(1)–10 would be revised to clarify that if a contract for a variable rate transaction provides for a delay in the implementation of changes to an index value, the creditor may use any index value in effect during the delay period. For example, if a contract specifies that rate changes are based on the index value in effect 45 days before the change date, the creditor may use any index value in effect within that 45-day delay period.

Proposed comment 17(c)(1)–18 addresses pawn transactions. There has been some confusion about the coverage and compliance of pawn transactions under the TILA. The comment clarifies how some of the items required to be disclosed under § 226.18 such as the amount financed, the finance charge, and the percentage should be disclosed. Disclosure of these transactions under the open-end credit provisions is not addressed based on the belief that typically pawn transactions are not open-end credit transactions.

Section 18—Content of Disclosures

18(c) Itemization of Amount Financed

Paragraph 18(c)(1)(iii)

Proposed comment 18(c)(1)(iii)–2 concerns the treatment of certain charges known as ''upcharges'' that creditors may sometimes add to a fee charged by a third party for services such as maintenance and service contracts on automobiles. The comment, which only applies in cases where a creditor charges the same amount of an upcharge in both cash and credit transactions, offers flexibility in how creditors can choose to itemize and disclose the amount charged for the service (including the amount of the upcharge). The treatment of these fees for purposes of disclosures under the TILA does not govern the imposition or amount of such upcharges.