a consumer to inquire about an account and requires the bank to respond to such inquiry beyond the time limits provided by federal law. Such a state law would not be preempted for the extra time period.

State law provisions are preempted if they result in violations of §163 through §171 of chapter 4. For example, a state law that allows the card issuer to offset the consumer's credit-card indebtedness against funds held by the card issuer would be preempted, since it would violate 12 CFR 226.12(d). Conversely, a state law that requires periodic statements to be sent more than 14 days before the end of a free-ride period would not be preempted, since no violation of federal law is involved.

A bank, state, or other interested party may ask the Federal Reserve Board to determine whether state law contradicts chapters 1 through 3 of the TILA or Regulation Z. They also may ask if the state law is different from, or would result in violations of, chapter 4 of the TILA and the implementing provisions of Regulation Z. If the board determines that a disclosure required by state law (other than a requirement relating to the finance charge, annual percentage rate, or the disclosures required under *§2*26.32) is substantially the same in meaning as a disclosure required under the act or Regulation Z, generally creditors in that state may make the state disclosure in lieu of the federal disclosure.

Subpart E—Special Rules for Certain Home Mortgage Transactions

General Rules §226.31

The requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of Regulation Z. The disclosures for high cost and reverse mortgage transactions must be made clearly and conspicuously in writing, in a form that the consumer may keep.

Certain Closed-End Home Mortgages §226.32

The requirements of this section apply to a consumer credit transaction secured by the consumer's principal dwelling, in which either:

- The APR at consummation will exceed by more than 8 percentage points for first-lien mortgage loans, or by more than 10 percentage points for subordinate-lien mortgage loans, the yield on Treasury securities having comparable periods of maturity to the loan's maturity (as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor); or
- The total points and fees (*see* definition below) payable by the consumer at or before loan closing will exceed the greater of eight percent of the total loan amount or $480 for the calendar year 2002. (This dollar amount is adjusted annually based on changes in the Consumer Price Index. *See* staff commentary to 32(a)(1)(ii) for a historical list of dollar amount adjustments.) (§226.32(a)(1))

Exemptions:

- Residential mortgage transactions (generally purchase money mortgages),
- Reverse mortgage transactions subject to §226.33, or
- Open-end credit plans subject to Subpart B of Regulation Z.

Points and Fees include the following:

- All items required to be disclosed under §226.4(a) and (b), except interest or the time-price differential;
- All compensation paid to mortgage brokers; and
- All items listed in §226.4(c)(7), other than amounts held for future taxes, *unless* ***all*** *of the following conditions are met*:
  - The charge is reasonable
  - The creditor receives no direct or indirect compensation in connection with the charge, and
  - The charge is not paid to an affiliate of the creditor; and
- Premiums or other charges, paid at or before closing whether paid in cash or financed, for optional credit life, accident, health, or loss-of-income insurance, and other debt-protection or debt cancellation products written in connection with the credit transaction. (§226.32(b)(1))

Reverse Mortgages §226.33

A reverse mortgage is a non-recourse transaction secured by the consumer's principal dwelling which ties repayment (other than upon default) to the homeowner's death or permanent move from, or transfer of the title of, the home.

Subpart F-Electronic Communication

Section 226.36 contains the rules for electronic delivery of required disclosures, when consumers have consented to receive them electronically. A creditor that delivers disclosure electronically has two options under the regulation. The creditor must:

1. Send the disclosure to the consumer's electronic address; or
2. Make the disclosure available at another location such as an Internet web site; AND
   i. Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the financial institution's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and

ii. Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

When a disclosure provided by an electronic means is returned to a creditor as undeliverable, the creditor shall take reasonable steps to attempt redelivery using information in its files.

Section 226.36(d)(3) provides exemptions from these rules for certain disclosures. A creditor may comply with items 1 or 2 above, without the sub-requirements of item two for the delivery of the following disclosures:

- §226.5a Credit and charge card applications and solicitations;
- §226.5b(d) certain disclosures related to Home Equity Plans;
- §226.5b(e) the home equity brochure published by the Federal Reserve Board;
- §226.16 open-end credit advertising rules;
- §226.17(g)(1) through (5) certain disclosures when a creditor receives a purchase order or request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation;
- §226.19(b) closed-end variable rate disclosures; and
- §226.24 closed-end advertising rules.

Specific Defenses §108
Defense Against Civil, Criminal, and Administrative Actions

A financial institution in violation of TILA may avoid liability by:

- Discovering the error before an action is brought against the financial institution, or before the consumer notifies the financial institution, in writing, of the error.
- Notifying the consumer of the error within 60 days of discovery.
- Making the necessary adjustments to the consumer's account, also within 60 days of discovery. (The consumer will pay no more than the lesser of the finance charge actually disclosed or the dollar equivalent of the APR actually disclosed.)

The above three actions also may allow the financial institution to avoid a regulatory order to reimburse the customer.

An error is "discovered" if it is:

- Discussed in a final, written report of examination.
- Identified through the financial institution's own procedures.
- An inaccurately disclosed APR or finance charge included in a regulatory agency notification to the financial institution.

When a disclosure error occurs, the financial institution is not required to re-disclose after a loan has been consummated or an account has been opened. If the financial institution corrects a disclosure error by merely re-disclosing required information accurately, without adjusting the consumer's account, the financial institution may still be subject to civil liability and an order to reimburse from its regulator.

The circumstances under which a financial institution may avoid liability under the TILA do not apply to violations of the Fair Credit Billing Act (chapter 4 of the TILA).

Additional Defenses Against Civil Actions

The financial institution may avoid liability in a civil action if it shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error that occurred despite the maintenance of procedures to avoid the error.

A bona fide error may include a clerical, calculation, computer malfunction, programming, or printing error. It does not include an error of legal judgment.

Showing that a violation occurred unintentionally could be difficult if the financial institution is unable to produce evidence that explicitly indicates it has an internal controls program designed to ensure compliance. The financial institution’s demonstrated commitment to compliance and its adoption of policies and procedures to detect errors before disclosures are furnished to consumers could strengthen its defense.

Statute of Limitations §108 and §130

Civil actions may be brought within one year after the violation occurred. After that time, and if allowed by state law, the consumer may still assert the violation as a defense if a financial institution were to bring an action to collect the consumer’s debt.

Criminal actions are not subject to the TILA one-year statute of limitations.

Regulatory administrative enforcement actions also are not subject to the one-year statute of limitations. However, enforcement actions under the policy guide involving erroneously disclosed APRs and finance charges are subject to time limitations by the TILA. Those limitations range from the date of the last regulatory examination of the financial institution, to as far back as 1969, depending on when loans